

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 IN RE: NATIONAL ) MDL No. 2804  
5 PRESCRIPTION OPIATE )  
6 LITIGATION, ) Case No.  
7 ) 1:17-MD-2804  
8 )  
9 THIS DOCUMENT RELATES TO ) Hon. Dan A.  
10 ALL CASES ) Polster  
11 )

12  
13  
14  
15 Thursday, April 25, 2019  
16  
17  
18  
19  
20

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22  
23 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
24 CONFIDENTIALITY REVIEW  
25  
26  
27  
28  
29  
30

31 Videotaped Deposition of DAVID S.  
32 EGILMAN, M.D., MPH, held at the Providence  
33 Marriott Downtown, 1 Orms Street, Providence,  
34 Rhode Island, commencing at 9:08 a.m., on the  
35 above date, before Debra A. Dibble, Certified  
36 Court Reporter, Registered Diplomate  
37 Reporter, Certified Realtime Captioner,  
38 Certified Realtime Reporter and Notary  
39 Public.  
40

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31          Jonathan Jaffe

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11 Bill Geigert

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|    |                               |                      |      |
|----|-------------------------------|----------------------|------|
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| 10 |                               |                      |      |
|    | Egilman 1B                    | Egilman Expert       | 19   |
| 11 |                               | Report and Exhibits, |      |
|    |                               | Volume 2 of 3 binder |      |
| 12 |                               |                      |      |
|    | Egilman 1C                    | Egilman Expert       | 19   |
| 13 |                               | Report and Exhibits, |      |
|    |                               | Volume 3 of 3 binder |      |
| 14 |                               |                      |      |
|    | Egilman 1D                    | Egilman Opinions     | 19   |
| 15 |                               | Received 4-23-2019   |      |
|    |                               | binder               |      |
| 16 |                               |                      |      |
|    | Egilman 1E                    | thumb drive,         | 20   |
| 17 |                               | (DECHERT1)           |      |
| 18 | Egilman 1F                    | 5-25-19 Report of    | 20   |
|    |                               | David S. Egilman MD, |      |
| 19 |                               | MPH                  |      |
| 20 | Egilman 1G                    | thumb drive          | 20   |
| 21 |                               |                      |      |
| 22 |                               |                      |      |
| 23 |                               |                      |      |
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|    |            |                      |     |
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| 1  | Egilman 2  | Poster (8.5 x 11     | 93  |
| 2  |            | copy) Deconstructing |     |
| 3  |            | the myth that        |     |
| 4  |            | prescribed opioids   |     |
| 5  |            | have a low risk of   |     |
| 6  |            | addiction by Daniel  |     |
| 7  |            | K. Cho, Mark         |     |
| 8  |            | Hocevar, Brown       |     |
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| 17 |            | does = arrow up      |     |
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| 22 |            | and avoids its own   |     |
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|    |            | marketing drove      |     |
|    |            | sales                |     |

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| 2  |            | solution to red      |     |
| 3  |            | flagged stores was   |     |
| 4  |            | to find a            |     |
| 5  |            | distributor who      |     |
| 6  |            | would sell to them.  |     |
| 7  |            | All 3 WAG            |     |
| 8  |            | distributor          |     |
| 9  |            | facilities failed to |     |
| 10 |            | implement SOM        |     |
| 11 |            | procedures           |     |
| 12 | Egilman 12 | Definition -         | 296 |
| 13 |            | "Venture" refers to  |     |
| 14 |            | all defendants       |     |
| 15 |            | (including their     |     |
| 16 |            | associated           |     |
| 17 |            | individuals and/or   |     |
| 18 |            | organizations) and   |     |
| 19 |            | covers all aspects   |     |
| 20 |            | of marketing,        |     |
| 21 |            | distribution, and    |     |
| 22 |            | supply they engaged  |     |
| 23 |            | in                   |     |
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|    |            | the members on the   |     |
|    |            | "venture" with two   |     |
|    |            | Redweld folders"     |     |
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|    |            | have known that      |     |
|    |            | higher doses kill    |     |
|    |            | and warned about     |     |
|    |            | this                 |     |

|    |            |                      |     |
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| 1  | Egilman 17 | All for one and one  | 340 |
| 2  |            | for all - the        |     |
| 3  |            | "venture" knew       |     |
| 4  |            | collective marketing |     |
| 5  |            | increased the size   |     |
| 6  |            | of the opioid pie.   |     |
| 7  |            | Similarly had any    |     |
| 8  |            | "venture" member     |     |
| 9  |            | broken ranks, the    |     |
| 10 |            | opioid market would  |     |
| 11 |            | have slowed or if    |     |
| 12 |            | the complete truth   |     |
| 13 |            | was told (no         |     |
| 14 |            | efficacy and high    |     |
| 15 |            | addiction risk) the  |     |
| 16 |            | market would have    |     |
| 17 |            | crashed              |     |
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| 19 |            | FDA tried to limit   |     |
| 20 |            | use in 2001 by       |     |
| 21 |            | changing the label   |     |
| 22 |            | from "more than a    |     |
| 23 |            | few days" to         |     |
| 24 |            | "extended period of  |     |
| 25 |            | time," the "venture" |     |
| 26 |            | used this language   |     |
| 27 |            | to increase the      |     |
| 28 |            | market               |     |
| 29 | Egilman 19 | Opinion - the        | 361 |
| 30 |            | "venture" corrupted  |     |
| 31 |            | the FDA and Salem -- |     |
| 32 |            | News.com FDA         |     |
| 33 |            | Corruption Worsens   |     |
| 34 |            | as Death Toll Mounts |     |
| 35 |            | in Drug Epidemic!    |     |
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|    |             |                      |     |
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| 1  | Egilman 30A | Opinion-             | 439 |
| 2  |             | AmerisourceBergen    |     |
| 3  |             | ("ABC") was light on |     |
| 4  |             | order monitoring.    |     |
| 5  |             | The ABC focus is     |     |
| 6  |             | only on rapid        |     |
| 7  |             | growth, not steady   |     |
| 8  |             | sales Focus on big   |     |
| 9  |             | accounts only for    |     |
| 10 |             | suspicious order     |     |
| 11 |             | monitoring, with     |     |
| 12 |             | revisions            |     |
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| 14 |             | AmerisourceBergen    |     |
| 15 |             | ("ABC") wanted to    |     |
| 16 |             | 'low key' (HIDE) its |     |
| 17 |             | association with     |     |
| 18 |             | Pain Care Forum      |     |
| 19 |             | ("PCF") with         |     |
| 20 |             | attachments          |     |
| 21 |             | PPLP004210521-       |     |
| 22 |             | 4210523,             |     |
| 23 |             | PPLP004279424-       |     |
| 24 |             | 4279425,             |     |
|    |             | PPLP004303453,       |     |
|    |             | PPLP004303456-       |     |
|    |             | 4303457,             |     |
|    |             | PPLPC018001477198-   |     |
|    |             | 1477200,             |     |
|    |             | PPLPC022000926958-   |     |
|    |             | 22000926959, was     |     |
|    |             | marked for           |     |
|    |             | identification.)     |     |
|    |             | — — — — —            |     |

1 PROCEEDINGS

2 (April 25, 2019 at 9:08 a.m.)

3 THE VIDEOGRAPHER: Good

4 morning. We are now on the record.

5 My name is Bill Geigert. I'm a

6 videographer for Golkow Litigation

7 Services. Today's date is April 25th,

8 2019, and the time is 9:09 a.m. This

9 video deposition is being held in

10 Providence, Rhode Island, in the

11 matter of National Opioid Litigation.

12 The deponent is Dr. David

13 Egilman. The court reporter is Debbie

14 Dibble, and she will now swear in the

15 witness.

16 DAVID S. EGILMAN, M.D., MPH,

17 having first been duly sworn, was examined

18 and testified as follows:

19 EXAMINATION

20 BY MR. DONOHUE:

21 Q. Good morning, Dr. Egilman. My

22 name is Matt Donohue. I represent Insys.

23 I apologize, but we do have to

24 do some housekeeping before we start the

1       questioning. So I'm going to ask everybody  
2       that's in the room to identify yourself for  
3       the court reporter because there are a number  
4       of people that she needs to know where you're  
5       sitting. So if you can identify yourself and  
6       then endeavor to sit in the same spot  
7       throughout the day, that will aid in the  
8       accuracy of the transcript.

9                       So I'll start.

10                      Matt Donohue with Holland &  
11       Knight representing Insys.

12                      MS. FARMER: Jessica Farmer  
13       with Holland & Knight representing Insys.

14                      MS. SAULINO: Jennifer Saulino  
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16                      MR. HALPERIN: Greg Halperin.

17                      MS. SWIFT: Kate Swift for  
18       Walgreens.

19                      MS. MCENROE: Elisa McEnroe  
20       from Morgan Lewis for RiteAid.

21                      MR. HYNES: Paul Hynes of  
22       Zuckerman Spaeder, for CVS.

23                      MR. BLANK: Timothy Blank with  
24       Dechert for Purdue.

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3 MR. ERCOL: Brian Ercol from  
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5 MS. WELCH: Donna Welch  
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7 MR. JAFFE: Jonathan Jaffe,  
8 plaintiffs consultant.

9 MS. CONROY: Jayne Conroy,  
10 Simmons Hanly Conroy, plaintiffs.

11 MS. LUCAS: Amy Lucas,  
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13 Johnson & Johnson.

14 MS. NAKAMURA: Angel Nakamura  
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16 Parr defendants.

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19 MR. BAILEY: Clayton Bailey  
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21 MS. SACKS: Shayna Sacks,  
22 Napoli Shkolnik for plaintiffs  
23 Cuyahoga County.

24 MR. HAHN: Bill Hahn, Barnes &



1 Thornburg on behalf of H.D. Smith.

2 MS. HURD: Ellyn Hurd, Simmons  
3 Hanly Conroy for the plaintiffs.

4 MR. MIGLIORI: Donald Migliori,  
5 Motley Rice, on behalf of Summit  
6 County and plaintiffs.

7 MR. KROEGER: Rick Kroeger.  
8 Simmons Hanly Conroy on behalf of  
9 plaintiffs.

10 MR. GOLDSTEIN: Josh Goldstein,  
11 Ropes & Gray on behalf of  
12 Mallinckrodt, LLC.

13 MR. GHOSH: Pratik Ghosh,  
14 Kirkland and Ellis, Allergan  
15 defendants.

16 SPECIAL MASTER COHEN: Special  
17 Master David Cohen.

18 Hey, there's air conditioning  
19 in this room, and I can tell you that  
20 Debbie cannot hear you if you're back  
21 there, so speak very loudly, please.

22 MR. DONOHUE: And then we have  
23 a number of people on the telephone,  
24 but you already have those, right?

1                   THE REPORTER: Are you all  
2                   right if I just indicate those on the  
3                   transcript appearances?

4                   MR. DONOHUE: I'm fine with  
5                   that.

6                   Next, just housekeeping matter  
7                   is, I want to explain on the record  
8                   what we've marked as our first  
9                   exhibit.

10                  So marked as Exhibit 1A, is a  
11                  binder entitled "Egilman Report and  
12                  Exhibits Volume 1 of 3." Marked as  
13                  Exhibit 1B is a black binder entitled  
14                  "Egilman Report and Exhibits, Volume 2  
15                  of 3."

16                  Marked as Exhibit 1C is a black  
17                  binder entitled "Egilman Report and  
18                  Exhibits, Volume 3 of 3."

19                  Marked as Exhibit 1D is a  
20                  binder entitled "Egilman Opinions  
21                  Revised." And that captures the  
22                  revised material that we got produced  
23                  by plaintiffs.

24                  Marked as Exhibit 1E is a flash

1 drive. It has written on it  
2 "Dechert 1," and it contains Excel  
3 spreadsheets as part of Dr. Egilman's  
4 report.

5 And marked as Exhibit 1G is a  
6 black flash drive. This contains  
7 Dr. Egilman's report, exhibits, the  
8 notice of deposition, and resource  
9 materials.

10 (Whereupon, Deposition Exhibit  
11 Egilman 1A, Egilman Expert Report and  
12 Exhibits, Volume 1 of 3 binder, was  
13 marked for identification.)

14 (Whereupon, Deposition Exhibit  
15 Egilman 1B, Egilman Expert Report and  
16 Exhibits, Volume 2 of 3 binder, was  
17 marked for identification.)

18 (Whereupon, Deposition Exhibit  
19 Egilman 1C, Egilman Expert Report and  
20 Exhibits, Volume 3 of 3 binder, was  
21 marked for identification.)

22 (Whereupon, Deposition Exhibit  
23 Egilman 1D, Egilman Opinions Received  
24 4-23-2019 binder, was marked for

1 identification.)

2 (Whereupon, Deposition Exhibit  
3 Egilman 1E, thumb drive, (DECHERT1),  
4 was marked for identification.)

5 (Whereupon, Deposition Exhibit  
6 Egilman 1F, 5-25-19 Report of David S.  
7 Egilman MD, MPH, was marked for  
8 identification.)

9 (Whereupon, Deposition Exhibit  
10 Egilman 1G, thumb drive, was marked  
11 for identification.)

12 Q. (BY MR. DONOHUE) So that was  
13 all part of Dr. Egilman's report and  
14 accompanying materials.

15 This is -- if anyone needs to  
16 look at the report or the exhibits  
17 electronically, I have that hooked up to my  
18 computer right now. And so that's what we'll  
19 be looking at, 1G, if we do that.

20 And then finally, marked as  
21 Exhibit 1F is just the report of Dr. Egilman  
22 dated March 25, 2019, and it's in a spiral  
23 binding for easy access.

24 Sorry about that distraction.

1 Dr. Egilman, when were you  
2 retained in this litigation?

3 A. November of last year?

4 Q. Do you recall --

5 UNIDENTIFIED SPEAKER: Can you  
6 speak up please? We cannot hear you  
7 down here. To the witness.

8 THE WITNESS: November of last  
9 year.

10 Q. (BY MR. DONOHUE) Do you recall  
11 when in November of 2018 you were retained?

12 A. Second or third week.

13 Q. Second or third week.

14 Who retained you?

15 A. Ms. Conroy.

16 SPECIAL MASTER COHEN: Let me  
17 interrupt and ask if there's any way  
18 to mic the witness, because this room  
19 has that -- the loud air conditioning.  
20 It's hard for me to hear him, so I  
21 know those folks can't.

22 MR. BLANK: We can't hear a  
23 word.

24 MR. DONOHUE: I don't know if

1           the videographer has a mic.

2                   UNIDENTIFIED SPEAKER:  It's  
3           very difficult to hear on the phone.

4                   MR. DONOHUE:  Let's go off the  
5           record for a second and see if we can  
6           fix this.

7                   THE VIDEOGRAPHER:  Off the  
8           record.  The time is 9:16.

9                   (Recess taken, 9:15 a.m. to  
10          9:24 a.m.)

11                  THE VIDEOGRAPHER:  We are back  
12          on the record at 9:25.

13                  Q.          (BY MR. DONOHUE)  Dr. Egilman,  
14          before the break, you had testified that  
15          Ms. Conroy retained you in the second or  
16          third week of November 2018 for this  
17          engagement.  Do I have that right?

18                  A.          Yes.

19                  Q.          And how did Ms. Conroy retain  
20          you?

21                  A.          I think it was a phone call.

22                  Q.          And what were you retained to  
23          do?

24                  A.          Somewhere here I have printed

1 assignments.

2 There it is.

3 Okay. So I was asked to  
4 determine within a reasonable degree of  
5 medical and scientific certainty whether or  
6 not various defendants working together  
7 and/or separately were significant factors of  
8 causing the opioid epidemic.

9 Q. Were you retained to do  
10 anything else?

11 A. That was my assignment.

12 Q. Did you enter into a written  
13 engagement with Ms. Conroy?

14 A. No.

15 Q. Do you have an oral agreement  
16 with respect to your engagement here?

17 A. Yes.

18 Q. What are the terms of the oral  
19 agreement that you have with Ms. Conroy with  
20 respect to your engagement?

21 A. I'm not sure I understand the  
22 question.

23 Q. Well, with respect to your  
24 engagement in this litigation, first of all,

1       what do you understand you are retained to do  
2       in the litigation -- strike that.

3                       With respect to your engagement  
4       in this litigation, what case or cases are  
5       you retained as an expert on?

6               A.       In the MDL, Cuyahoga and Summit  
7       County case.

8               Q.       Are you retained as an expert  
9       by Ms. Conroy in any other case?

10              A.       No.

11                      MS. CONROY:  Objection.

12              Q.       (BY MR. DONOHUE)  Are you  
13       currently retained as an expert by any of the  
14       plaintiffs' firms in the MDL action in any  
15       other case?

16              A.       No.

17              Q.       Have you been providing, with  
18       respect to your engagement in this  
19       litigation, any consulting advice?

20                      MS. CONROY:  Objection.

21                      THE WITNESS:  I'm not sure I  
22       understand the -- what you mean by  
23       "consulting advice."

24              Q.       (BY MR. DONOHUE)  is it your



1 understanding that you've been retained in  
2 this litigation as a testifying expert?

3 A. Yes.

4 Q. Do you understand, if I use the  
5 term "consulting expert," what that means?

6 A. Yes.

7 Q. Have you been retained as a  
8 consulting expert in this litigation?

9 A. Maybe I understood what it  
10 means, because my understanding was that  
11 you're either a testifying or a consulting  
12 expert. So if I'm a testifying expert, I  
13 can't be a consulting expert at the same  
14 time. So maybe I didn't understand the  
15 difference. But that was my understanding of  
16 the difference.

17 Q. Prior to this engagement, have  
18 you done any other engagements with  
19 plaintiffs' counsel?

20 MS. CONROY: Objection.

21 THE WITNESS: Please define  
22 "engagement."

23 Q. (BY MR. DONOHUE) In other  
24 words, have plaintiffs' counsel retained you

1 in the past for expert services in  
2 litigation?

3 A. Do you mean Ms. Conroy?

4 Q. We can start with Ms. Conroy.

5 A. Yes.

6 Q. How many times?

7 A. I think there were three cases  
8 for Federal-Mogul, and there were three  
9 opioid cases to 2003, 2005. Those are Purdue  
10 cases.

11 I think that's all I've done at  
12 her request working with her.

13 Q. With respect to the three  
14 opioid cases that you were retained by  
15 Ms. Conroy's firm, what was the nature of  
16 your expert testimony in those cases?

17 A. Well, do you want the short  
18 answer or a long answer?

19 Q. Well --

20 A. I mean, I have the transcript  
21 of the deposition here. I have my -- part of  
22 my report is incorporated in this report.

23 That's the short answer. I can  
24 give you the long answer that goes through

1 the details of what I can recall testifying  
2 about.

3 Q. No, I don't want the long  
4 answer, but if you could tell us what your  
5 assignment was in those three opioid cases  
6 that you were retained in 2003 to 2005, that  
7 would be helpful.

8 A. I don't remember a specific --  
9 what the specific assignment was at this  
10 time, but the report, the deposition, there  
11 were, I think, several reports and  
12 depositions would have been my response to  
13 the assignment. I don't know if I explicitly  
14 was asked for my assignment in a deposition,  
15 or whether I included that in the report. I  
16 don't recall.

17 Q. In the past, have you been  
18 hired as an expert for litigation services by  
19 Motley Rice?

20 A. I'm not sure who I was retained  
21 by, but I was in a case that Motley Rice  
22 tried. I was retained by Orrick, I think, in  
23 that case. And there was the -- I'm sorry,  
24 the asbestos trust case against the tobacco

1 companies.

2 I don't think I've testified in  
3 any cases or given depositions in any cases  
4 at the request of Motley Rice. It's possible  
5 that there was an asbestos case.

6 Q. Have you been retained by the  
7 past -- excuse me, in the past for litigation  
8 services by the law firm of Spangenberg,  
9 Sibley & Lancione?

10 A. Not that I can recall.

11 Q. Have you been retained in the  
12 past for litigation services as an expert by  
13 Skikos Crawford?

14 A. No.

15 Q. Have you been retained in the  
16 past for litigation services by the law firm  
17 Mitchell Rafferty & Proctor?

18 A. Not that I can remember.

19 Q. Have you --

20 A. Let me just frame this a little  
21 bit, but it's come to my attention over time  
22 that law firms have listed me in a case  
23 without my knowledge or permission. So it's  
24 possible that that may have happened, but I

1       don't know whether it happened or not.

2                       I know there are -- I know of  
3       some instances where that's happened, but I  
4       was never contacted by any of those firms to  
5       work on any cases. Whether they listed me on  
6       cases without any knowledge or consent, I  
7       don't know.

8               Q.       Do you recall specifically what  
9       law firm listed you without your permission  
10      in their case?

11              A.       There are many. But one of  
12      them is Farano. Farano, I think, listed me  
13      in 15,000 cases, as I recall, without my  
14      knowledge or consent.

15              Q.       Are there any other instances  
16      of where you were listed as an expert without  
17      your knowledge and consent other than the  
18      Farano case that you can remember?

19              A.       There are others. I can't  
20      remember all of them.

21              Q.       Do you have any understanding  
22      why you were listed as an expert without your  
23      consent in those cases?

24              A.       I assume they thought adding my

1 name to the list of witnesses would add value  
2 to the case for them.

3 But I don't know that. In some  
4 way, shape, or form, they saw some advantage  
5 to listing me as a witness.

6 Q. Have you ever been compensated  
7 by a plaintiff's law firm for being listed as  
8 an expert in any of those cases?

9 MS. CONROY: Objection.

10 THE WITNESS: Which cases are  
11 you talking? The Farano cases?

12 Q. (BY MR. DONOHUE) Yes, the  
13 Farano cases or other cases where you were  
14 listed without your permission or consent.  
15 Have you ever been compensated by those  
16 plaintiffs' law firms for that act?

17 A. No.

18 Q. In the past have you been  
19 retained as an expert for litigation services  
20 by the Napoli Shkolnik firm?

21 A. No.

22 Q. So with respect to this  
23 engagement that we're here for today, how  
24 many hours have you personally spent?

1           A.       384.

2           Q.       And what is the hourly rate  
3       that you're charging for your services in  
4       this litigation?

5           A.       For deposition? \$650 an hour.  
6                    For everything else, it's \$600  
7       an hour.

8                    (Thomas J. McGarrigle from  
9       Reed Smith for AmerisourceBergen  
10      joined.)

11          Q.       (BY MR. DONOHUE) Have you had  
12      others assisting you in this engagement?

13          A.       Yes.

14          Q.       Who have you had assist you in  
15      the engagement?

16          A.       I have three or four staff, and  
17      I hired some students to do -- to assist.

18          Q.       And could you tell us who are  
19      the staff that have assisted you in the  
20      engagement?

21          A.       Sure. Donna Barbarita.

22          Q.       Could you spell the last name  
23      for the court reporter, please?

24          A.       B-A-R-B-A-R-I-T-A.

1 Samson Egilman.

2 Joan Steffen, S-T-E-F-F-E-N.

3 Muna Yiman, Y-I-M-A-N.

4 Q. Can you do the first name,  
5 spell it, please?

6 A. M-U-N-A.

7 Kevin Reardon.

8 And Alexis Biccirrilo. And I  
9 cannot spell her last name.

10 But I could get it to you at a  
11 break, probably.

12 Q. Okay. So the list of six  
13 people --

14 A. Oh, and one more.

15 Q. I'm sorry.

16 A. Triet Tran. T-R-I-E-T, Tran.  
17 T-R-A-N.

18 Q. So the seven people that you  
19 just listed, does that include both staff and  
20 students?

21 A. No, that's staff.

22 Q. All right. Could you please  
23 list out students that have assisted you in  
24 the engagement?



1           A.       Sure. Emma McMillan, Emma  
2 Cavanish, Max Kozlow, Dan Cho. Lindsay,  
3 whose last name I can't remember, but I can  
4 get you that at a break.

5                   And Mark Hocevar,  
6 H-O-E-V-E-N-E-R. (sic)

7           Q.       And I apologize, the first two  
8 students that you listed, they were both  
9 Emmas?

10          A.       They are both Emmas.

11          Q.       So Emma --

12          A.       It does get confusing.

13          Q.       So with Emma No. 1, what's her  
14 last name again?

15          A.       I don't know which order I gave  
16 them to you, but one is named McMillan and  
17 one is named Cavanish. Last name.

18          Q.       Now, with respect to the seven  
19 staff members that you listed, are those  
20 staff that you employ?

21          A.       Yes.

22          Q.       What is Donna Barbarita's  
23 position?

24          A.       Office manager.

1                   Q.       And how did Ms. Barbarita  
2       assist you in the engagement?

3                   A.       She did copying. Organizing of  
4       documents.

5                             She may have helped search for  
6       some texts. She did scanning of documents.

7                             That would be, I think, most of  
8       the things that she did.

9                   Q.       And with respect to Samson  
10       Egilman, is that a relation of yours?

11                  A.       It is.

12                  Q.       And what relation?

13                  A.       He is my son.

14                  Q.       And what did your son do to  
15       assist you with respect to this engagement?

16                  A.       Well, he did some of the same  
17       things. He also did some searching on  
18       relativity for documents.

19                             Helped organize documents. He  
20       did searches for some medical literature, I  
21       think.

22                  Q.       And what is your son's title?

23                  A.       Researcher.

24                  Q.       And then with respect to

1       Joan Steffen -- do I have that right?

2               A.       You do.

3               Q.       What's Ms. Steffen's title?

4               A.       Researcher.

5               Q.       And how did Ms. Steffen assist  
6 you in this engagement?

7               A.       Similarly. Did searches of the  
8 database. Or helped organize -- she helped  
9 organize the report.

10                       They all did similar things.  
11 So -- but that's what she did. She didn't  
12 work that much on this case. She did some  
13 work.

14               Q.       And with respect to Muna Yiman?

15               A.       Yiman.

16               Q.       Yiman. I apologize.

17               A.       No problem.

18               Q.       What's her role?

19               A.       Same as Joan's. She did some  
20 searches, some organizing of documents, some  
21 preparation, preparation of the organization  
22 that you see in the room. Sometimes I think  
23 she -- sometimes I wanted books ordered and  
24 she might order the books. Go to the

1 library, get articles.

2 Q. Okay. With respect to  
3 Kevin Reardon, what's his title?

4 A. Researcher.

5 Q. And what was his role in  
6 assisting you with the engagement?

7 A. Same thing. To do searches of  
8 the database, organize documents. He, I  
9 think, reviewed some depositions as well.  
10 Certainly he -- he read my deposition.

11 And those are the tasks that he  
12 did. They all pretty much do the same thing.

13 Q. Okay. Alexis Biccirrilo?

14 A. Yes.

15 Q. What's her title?

16 A. Researcher.

17 Q. And same tasks as you listed  
18 before?

19 A. Yes.

20 Q. And Triet Tran? Is she also a  
21 researcher?

22 A. It's a he, and, yes.

23 Q. I apologize.

24 A. No problem.

1           Q.       Same task as you've listed  
2 before for the other research?

3           A.       Essentially. They pretty much  
4 all do the same thing.

5           Q.       Are all of the staff that you  
6 just listed, those seven people, full-time  
7 employees?

8           A.       Yes.

9           Q.       And with respect to their work  
10 for you, as your staff, do they only assist  
11 in litigation services? Or do they do other  
12 work for you?

13          A.       They do other work for me.

14          Q.       Okay. What are some of the  
15 other things they do if they're not assisting  
16 you with your expert work in litigation?

17          A.       They do work on other  
18 consulting work for companies, and they also  
19 work on writing papers. Which may not lead  
20 to litigation, so they do research on --  
21 academic research on various issues.

22                   They also help with the  
23 non-profit that I run called Global Health  
24 Education Training Service.

1                   So we also have certain public  
2                   education efforts, and they do that.

3                   So, for example, they're --  
4                   we've been recent -- I met with the FDA on  
5                   talc issues, and they helped organize the  
6                   materials for that presentation.

7                   They met with Congress people  
8                   with respect to talc issues on two occasions.  
9                   Third occasion coming up, so two.

10                  We prepared materials for the  
11                  congressional subcommittee.

12                  We provide information to --  
13                  they help -- they help -- they all teach my  
14                  course, or help teach my course at Brown. So  
15                  they TA the course. Help prepare materials  
16                  for the course.

17                  When I give talks, they  
18                  generally help prepare the materials for the  
19                  talks, PowerPoints and other things like  
20                  that.

21                  That's most of what they do.

22                  Q.       How many hours did your staff  
23                  collectively work on this engagement?

24                  A.       That, I don't know. I don't

1       have that number.

2               Q.       Can you estimate?

3               A.       No.

4               Q.       Would you say that in the last  
5       four months that you've been engaged for this  
6       litigation, your staff has worked full time  
7       on it?

8               A.       Oh. My staff usually works  
9       more than 40 hours a week. Not always. But  
10       my staff has been involved in a variety of  
11       issues over this time period, not related to  
12       the opioids. So I don't know. It's  
13       conceivable that they worked an average of 30  
14       or 40 hours for six or eight or ten of those  
15       weeks.

16                       Some of them were taking  
17       vacations and other things, so I -- I really  
18       don't know that.

19               Q.       Are you billing the hours that  
20       your staff works on this engagement --

21               A.       Yes.

22               Q.       -- to the plaintiffs?

23               A.       Yes.

24               Q.       And how do you do that billing?

1 Do you prepare monthly bills?

2 A. No. We just keep the  
3 cumulative hours and usually every three or  
4 four months I send the bill.

5 Q. And how are the cumulative  
6 hours kept?

7 A. Well, I keep them rolling on  
8 a -- on a phone. So when I do hours, I put  
9 the total hours of numbers in the day and  
10 change the total.

11 Q. So your staff reports to you on  
12 a daily basis the hours they've worked?

13 A. No. That's what I do. I  
14 actually don't know how they keep their  
15 hours. I think they do something similar.

16 Q. How does your staff report to  
17 you the hours that they've worked on this  
18 engagement?

19 A. They don't report to me the  
20 hours they've worked on the engagement.

21 Q. How do you know how much to  
22 bill your staff out for this occasion?

23 A. They report to Donna Barbarita,  
24 and she generates the bill.



1           Q.       And what are you charging with  
2       respect to your staff members with respect to  
3       this engagement?

4           A.       I don't know. Usually 50 to  
5       \$70 an hour. I don't know what the billing  
6       is really.

7           Q.       So that 50 to \$75 an hour would  
8       be for the seven people that we've identified  
9       as your staff?

10          A.       Correct.

11          Q.       Did you rely on information  
12       from your staff to develop the opinions in  
13       your report?

14          A.       Sure. The research that they  
15       did formed the basis of some of the opinions  
16       in my report.

17          Q.       How does your staff know what  
18       to do? How do you instruct them to assist  
19       you in the engagement?

20          A.       Well, we meet and discuss the  
21       issue generally to start. Different staff  
22       people are given different areas to do  
23       research on.

24                   And then they talk to each

1     other about the iterative searches they've  
2     done and the work they've done. And then  
3     when I find something, generally I yell at  
4     them, out my door, because they're all right  
5     outside my door, and I say, "Hey, could  
6     somebody go get me this?" Or "Go check  
7     that?"

8                     And so that's -- a lot of the  
9     direction comes in that form.

10                    And they interact with each  
11    other as well. Decide amongst themselves  
12    what they think are important, sharing  
13    documents back and forth. And they try to  
14    co-create -- as we go through, we try to  
15    create various outlines which go in a --  
16    well, like this thing. This 3M thing, we  
17    have a sticky thing. It's not a sticky  
18    thing, but I have several sticky ones. So we  
19    might write different topics up, and people's  
20    names get attached to those topics. We do a  
21    little research on those things.

22                    Sometimes -- I may give you an  
23    example. For example, I was interested in  
24    the anthropology of pain and sociology of

1 pain. So Alexis was a sociology major. Joan  
2 was an anthropology major. So I had Alexis  
3 put together -- or go get me sociology on the  
4 anthropology of pain and organize that.

5 So that's how things happen.  
6 It's a fairly non-linear organizational  
7 management style, I would say.

8 Q. Do you provide instructions --  
9 written instructions to your staff to assist  
10 you in this engagement?

11 A. No. I yell at them.

12 Q. With respect to the flip charts  
13 that you mentioned, where their outlines are  
14 created, do you have those as part of your  
15 file with respect to this engagement?

16 A. I don't think so. Because we  
17 generally don't keep them up. I may have one  
18 or two.

19 Q. But you haven't kept the flip  
20 charts as part of your expert file?

21 A. No, not as a -- not on a  
22 regular basis. We may have one in my office  
23 now.

24 Q. Do you ever give your staff

1 instructions by e-mail with respect to  
2 engagements?

3 A. Sometimes.

4 Q. Did you give your staff any  
5 instructions to assist in this engagement?

6 A. Yes.

7 Q. Do you still have those  
8 e-mails?

9 A. Well, that wasn't done by  
10 e-mail.

11 Q. Maybe I got confused. Let me  
12 ask again.

13 As part of this engagement, did  
14 you provide instructions to your staff on how  
15 to assist you?

16 A. From time to time, over the  
17 past four months, I'm sure I've sent them  
18 e-mails saying "Get me this" or "Get me  
19 that." But most of my communications with  
20 them is by yelling.

21 Q. With respect to the students  
22 that you listed, which I think there were six  
23 students, are there --

24 A. There's a couple of others. We

1       did some manual work too, but I don't  
2       remember their names. I can't spell them.

3               Q.       Let's talk about the work  
4       that's -- the six students that you mentioned  
5       did.

6                       How did the students assist you  
7       in this engagement?

8               A.       Well, differently. They had  
9       different -- they more or less had research  
10      tasks. So -- because I tried to make the  
11      work academic for them in their area of  
12      interest.

13                      So Emma Cavanish had worked at  
14      a marketing company, so she helped put  
15      together the marketing literature. So I have  
16      a lot of marketing literature. One of the  
17      things she did was organize all of that  
18      marketing literature. And she did some  
19      researches -- oh, one of the searches she  
20      did, she did -- she came up with a list of  
21      sex terms. And she did searches to the  
22      database for sex terms. Hookers, tootsies,  
23      things like that.

24                      So she did a specific search

1       for sex terms.

2                       And so that was one thing she  
3       did.

4                       Eva -- Emma McMillan was  
5       interested in epidemiology, so I worked with  
6       her to look at the whole issue of the  
7       pay-for-play, impact in action that generated  
8       EERW. And that criticism of the EERW that's  
9       in the report came out of that work.

10                      Dan Shaw and Mark Hocevar  
11       worked on deconstructing the Fishbain paper  
12       from 2008. And that work resulted in the  
13       poster that's here that they presented at the  
14       All Ivy conference on Saturday. And so that  
15       was -- that was their work. So they had to  
16       do a lot of digging, because a lot of the  
17       citations in the Fishbain work in 2008 were  
18       unfindable. Because I don't know if they  
19       existed or not, but he couldn't find two of  
20       the 23 papers that he cited as evidence for  
21       the dictionaries, and then they did the  
22       reanalysis. So I worked with them on that  
23       poster presentation.

24                      And they're working on a paper

1       now they were -- draft paper they're working  
2       on that will also be submitted along with --  
3       after the -- sometime now.

4                       So -- was that what you wanted  
5       to know? Think there was something I left  
6       out.

7               Q.       Did you get Max and Lindsay?

8               A.       Oh, yeah. Max. Max -- Max  
9       deconstructed the complaint and went through  
10      the complaint. Tried to make sure we had all  
11      the documents that were cited on the  
12      complaint. Tried to organize them by themes.

13                      As you know, I -- the  
14      complaints had about nine or ten, for want of  
15      a better word, bad acts, which I condensed  
16      into basically two in my analysis of what was  
17      going on.

18                      And so he went through the  
19      complaint and tried to place those bad -- the  
20      way the plaintiffs had done it. And we also  
21      did the Massachusetts complaint, in  
22      reorganizing in that portion in the way that  
23      I conceived of the -- of the cause of the  
24      opioid epidemic.

1                   Max also did some -- we did  
2       some cross-checking of language. I think you  
3       saw that probably in your report, where  
4       duplicate language was taken from Purdue and  
5       used in marketing materials produced by some  
6       of the front organizations. So he did some  
7       searches, looking for where language was  
8       copied directly from manufacturers that went  
9       into -- directly into the marketing materials  
10      by the -- produced by the front  
11      organizations.

12                  So he did that.

13                  There was one other -- there's  
14      one other poster here that he had a -- that  
15      was -- that was his find. So, you know.

16                  So that's pretty much what -- I  
17      think what Max did.

18                  What was the last one?

19                  Q.       Before we move to that, Max  
20      presented at the All Ivy conference?

21                  A.       No. Dan Cho and Mark --

22                  Dan Cho presented but the  
23      poster was done by he and Mark Hocevar, who  
24      are med students at Brown.



1           Q.       And what was the nature of the  
2 presentation at the All Ivy conference?

3           A.       I'll get it for you.

4                   I should have -- we have a  
5 poster on that. So it should be here.

6                   Oh, here it is. Yeah, here it  
7 is.

8                   So this is the poster that he  
9 did.

10                  So this is the -- this is the  
11 poster that he just presented. So it starts  
12 with a historical description of the hockey  
13 stick and the epidemic. And -- can I -- ties  
14 the epidemic for addiction. And these are  
15 the specific -- this is taken from a  
16 published paper.

17                  So this ties to the rise of the  
18 epidemic for specific marketing acts done by  
19 the manufacturers.

20                  This is the reconstruction of  
21 the Fishbain paper. Fishbain took 23 papers  
22 of which -- they're not really papers. He  
23 took 23 things, two of which we could never  
24 find, including communicating within him. We

1       couldn't find him, I think.

2                       And so this is a breakdown of  
3       those papers. And how many patients came  
4       from each of those papers.

5                       And this is a -- the -- you can  
6       see the one study from Fishbain, the  
7       Milligan, Passik, and Taub paper, provides  
8       56 percent of the total participants and had  
9       a very low addiction rate. But there was  
10      another study that was also large and had a  
11      stream of zero.

12                      So what we did was we tried to  
13      use a standard definition for addiction,  
14      because the -- where the papers had not  
15      really looked for addiction, we threw them  
16      out. So an addiction rate, the reason one  
17      had an addiction rate of zero was because it  
18      didn't really look for addiction.

19                      So when you take the -- this is  
20      the Fishbain, original Fishbain results.  
21      Original Fishbain results has 2,102 patients,  
22      97 percent of which are not addicted.  
23      Three percent are addicted, and that's where  
24      he came up with the 3.87.

1                   But if you look at studies --  
2     if you look at the -- if you throw out the  
3     studies that you either can't find or --  
4     because they either may or may not exist, or  
5     you look at the studies where they actually  
6     look for addiction, you get a different rate.  
7     And that -- that gives you about 750  
8     patients, of which 33 percent are addicted.

9                   So that's the gist.

10                  Q.     Thank you for that.

11                         Did Mr. Cho and Mr. Hocevar  
12     rely on any information that they reviewed as  
13     part of this engagement to make that  
14     presentation?

15                  A.     They didn't rely on it, because  
16     it's confidential. They couldn't put it in.  
17     But they reviewed.

18                         Now, there are things in here  
19     that -- for example, Fishbain didn't disclose  
20     his associations with the litigation and  
21     Purdue in particular in the published paper.

22                         But what we did get --

23                         Now, I probably had this in  
24     2006, but at any rate, in relative -- in the

1 database with our documents were his reports  
2 for Purdue during the time period that he was  
3 preparing and publishing this paper. And  
4 some of those were cited in federal cases.  
5 So we cited those federal cases as evidence  
6 that he had misrepresented his  
7 non-association with the pharmaceutical  
8 companies in the end of this -- in the end  
9 here. Okay?

10 But we had more information on  
11 his associations with the pharmaceutical  
12 manufacturers which we didn't include because  
13 it was confidential.

14 It's like we did rely on it in  
15 a sense because it supported the construct  
16 that he had misrepresented the nature of his  
17 relationship with the manufacturers, as in  
18 not mentioning it.

19 Q. How many --

20 A. Oh, I think one other thing. I  
21 think the students -- before we got the  
22 cases, the students e-mailed Fishbain and  
23 asked him if during this time period he  
24 published this, he had any conflicts of

1 interest. And he wrote an e-mail back saying  
2 no, amongst other things.

3 The other things where he  
4 criticized him -- the general anticorporate  
5 construct in the -- and cynical views of the  
6 medical and scientific views toward  
7 corporations.

8 Q. And do you have that e-mail  
9 still?

10 A. I don't know if I have it, but  
11 Dan probably has it.

12 Q. As part of this engagement,  
13 have you kept copies of the e-mails that  
14 either the students or staff have sent and  
15 received?

16 A. No, I don't keep any e-mails.  
17 You know Jones Day is in the  
18 room, right?

19 MR. DONOHUE: I'll move to  
20 strike as nonresponsive.

21 Q. (BY MR. DONOHUE) A number of  
22 the students that you have had assisting you  
23 in the -- in this engagement, how many hours  
24 would you estimate that they have worked in

1 the last four months?

2 A. I don't know. Not much,  
3 because they mostly worked in January during  
4 inter-session. But unfortunately, they  
5 actually have to go to school. Now, Brown is  
6 pretty easy, okay? But they still have to  
7 show up for class and do some work. So they  
8 haven't done that much in the last couple of  
9 months.

10 Q. And these are all students from  
11 Brown?

12 A. They're all Brown students.

13 Q. Are the students compensated  
14 for the work that they have done to assist  
15 you on the engagement?

16 A. For some. They didn't get paid  
17 to do the academic work, so.

18 But some of this research they  
19 did was for me in preparation for the report.  
20 So I paid them for that, but I didn't pay  
21 them for doing the poster or for writing up  
22 the papers. That's their own.

23 Q. So what do you pay the students  
24 for with respect to this engagement?

1           A.       Well, I pay them while they're  
2       doing research for me related to the  
3       litigation. I don't pay them for work  
4       related to generating medical publications or  
5       scientific publications. It's in the  
6       disclosure here, so ...

7                   It says "DKC and MH worked as  
8       paid student researchers for the -- at the  
9       request of plaintiffs in opioid litigation.  
10      DKC and MH were not compensated by law firms  
11      for work on the paper. The lawyers for the  
12      plaintiffs did not review the paper and had  
13      no input into the content of the paper.  
14      Dr. Egilman serves as an expert witness at  
15      the request of cities and counties suing  
16      opioid manufacturers and distributors for  
17      money to help pay for the financial costs of  
18      the opioid epidemic."

19                   The reason I'm in here is I'm  
20      not an author of this, but they did  
21      acknowledge me as helping them prepare the  
22      work.

23           Q.       Do you pay the students with an  
24      hourly rate?

1           A.       I do.

2           Q.       What's the hourly rate?

3           A.       \$20 an hour.

4           Q.       How much have you been paid to  
5   date for this engagement?

6           A.       Nothing.

7                   Well maybe I got a \$10,000  
8   retainer, but that's it.

9           Q.       Have you sent any bills to the  
10   plaintiffs for your work on this engagement?

11          A.       Just the retainer bill.

12          Q.       How much are you currently owed  
13   for the engagement?

14          A.       384 hours times \$600.

15          Q.       What about the hours that your  
16   staff has worked on the engagement?

17          A.       I don't have that number.

18          Q.       But you'll be asking for  
19   compensation with respect to the  
20   reimbursement for the hours that your staff  
21   has worked; right?

22          A.       Yes.

23          Q.       Can you estimate for us what  
24   that would be?



1           A.       No.

2           Q.       Is it more than 384 hours?

3           A.       I don't know.

4           Q.       No idea?

5           A.       I do not have any idea whether  
6 it is more or less than 384 hours.

7           Q.       Do you have any idea of what  
8 ballpark of the hours is that your staff has  
9 worked?

10          A.       I do not. It's probably  
11 several hundred hours, I would say. It's not  
12 ten minutes, but I don't know how many hours.  
13 And I may be off. It may not be several  
14 hundred hours.

15          Q.       When it comes time to submit a  
16 bill for the hours that your staff has paid,  
17 how are you going to figure that out?

18          A.       They keep track of their hours.  
19 The hours go to Donna Barbarita. Donna  
20 Barbarita will send a bill.

21          Q.       So you believe Donna Barbarita  
22 currently has information about the number of  
23 hours your staff has worked on this  
24 engagement?

1           A.       I don't think so.

2                   MS. CONROY:  Objection.

3                   THE WITNESS:  I don't know if  
4           they've given her --

5                   I don't think they've given her  
6           the hours.  So they each have their  
7           own hours.

8           Q.       (BY MR. DONOHUE)  And what  
9           would you estimate the number of hours that  
10          your students have worked on this engagement?

11          A.       Same thing.  I don't have a  
12          good idea about that.  But mostly -- I mean,  
13          they work -- they work, you know, around 15  
14          to 30 hours for three or four weeks in  
15          January, and then after that, you know, five  
16          to 15 hours, maybe -- I doubt it -- in the  
17          next couple of months.

18          Q.       How much of your income last  
19          year was from expert work in the litigation?

20          A.       Probably half.

21          Q.       What were your other sources of  
22          income for last year?

23          A.       Consulting for companies.

24          Q.       Is that non-litigation

1 consulting?

2 A. It's confidential consulting.

3 Q. Any other sources of income for  
4 last year?

5 A. Sure.

6 Q. What else?

7 A. Investments.

8 That's about it.

9 Q. Does Brown pay you anything?

10 A. A library card. Discount on  
11 that.

12 The library card is probably  
13 worth about \$50,000 to me, just to give you a  
14 number.

15 The year before I got free  
16 parking, when I was teaching a course. They  
17 paid for the parking.

18 Q. Are you currently teaching any  
19 courses at Brown?

20 A. Not this semester.

21 Q. Do you plan on teaching next  
22 semester?

23 A. I do. Well, no. I plan on  
24 teaching -- because of this case, I plan on

1 teaching the next spring.

2 Q. Are you still practicing  
3 medicine?

4 A. I still have a license to  
5 practice, and I still occasionally see  
6 patients.

7 Q. How many patients would you say  
8 you now see?

9 A. Well, when I'm doing -- I  
10 probably see 10 or 15 consulting patients a  
11 year and maybe one or two regular patients  
12 who call me up or something I've seen them  
13 before for.

14 Q. Do you have an office where you  
15 practice medicine?

16 A. I do.

17 Q. Is it the same office you use  
18 for your expert litigation? Or different?

19 A. It's a slightly different  
20 suite.

21 I have -- in my office I have  
22 about eight rooms. In one of the rooms I  
23 have a medical setup.

24 Q. Speaking of the protective

1       order, were you provided the protective order  
2       in this case?

3               A.       Yes.

4               Q.       Did you review it?

5               A.       Yes.

6               Q.       And did you sign it?

7               A.       Yes.

8               Q.       And did you agree to be bound  
9       by it?

10              A.       Yes.

11              Q.       What about the staff that  
12       you've listed as helping you on the case?

13                      Did -- were they provided the  
14       protective order?

15              A.       Yes.

16              Q.       Did they sign it?

17              A.       Yes.

18              Q.       Did they agree to be bound by  
19       it?

20              A.       Yes.

21              Q.       And the students that you  
22       mentioned, the six students, did it -- were  
23       they provided the protective order?

24              A.       Yes.

1 Q. Did they sign it?

2 A. Yes.

3 Q. And they agreed to be bound by  
4 it?

5 A. Yes.

6 Q. Do you have a copy of those  
7 signed protective orders?

8 A. Someplace.

9 Q. Okay.

10 A. Not on me.

11 I think they were all sent to  
12 the plaintiff. I'm not completely sure that  
13 I kept copies. The lawyers have copies.

14 Q. We'll follow up on that  
15 separately.

16 Have you in the past violated  
17 court orders?

18 MS. CONROY: Objection.

19 THE WITNESS: I need to look at  
20 that settlement agreement to answer  
21 that question. I'm sure that -- I  
22 don't recall the language exactly.

23 Q. (BY MR. DONOHUE) What  
24 settlement agreement are you referring to?

1           A.       Between me and Lilly.

2           Q.       I'm sorry, I didn't hear you.

3       Between --

4           A.       Between me and Lilly.

5           Q.       What case was that?

6           A.       Zyprexa.

7           Q.       In the Zyprexa litigation, do  
8       you recall whether the Court in that case  
9       found that you had violated the Court's  
10      protective order?

11          A.       That's in dicta in a case in a  
12      ruling on the TRO that I wasn't at, yes.  
13      Something like that.

14          Q.       Did you violate the Court's  
15      protective order in the Zyprexa case?

16          A.       I need to look at the language  
17      that I wrote in the Lilly settlement before I  
18      answer that question. I need to refresh my  
19      recollection.

20          Q.       Where is that settlement?

21          A.       Where is that settlement? It's  
22      in my office.

23          Q.       So you have access to it?

24                    You can refresh your

1       recollection when you go back to your office?

2               A.       If I went back to my office, I  
3       could find the document and I could refresh  
4       my recollection.

5               Q.       And what is it that you need to  
6       refresh your recollection about with respect  
7       to the settlement agreement before answering?

8               A.       Well, that was a finely crafted  
9       document. And I need to recall exactly what  
10      was in it. And I can't recall exactly what  
11      was in it. It's been 9 -- 12 years. So  
12      before I answer questions about that, I want  
13      to refresh my recollection of what actually  
14      was signed and what happened.

15              Q.       All right. Are there any other  
16      instances you recall where you have violated  
17      a Court's order?

18              A.       No.

19              Q.       Do you recall the Ballinger v.  
20      Brush Wellman, Incorporated case?

21              A.       Correct.

22              Q.       Do you recall posting materials  
23      in violation of the Court's order in that  
24      case?



1           A.       That's not what happened.

2           Q.       What did happen?

3           A.       Jones Day hacked my computer,  
4       downloaded materials from my computer,  
5       illegally, then -- pardon me. Keller and  
6       Heckman in Washington, representing the  
7       Society for the Plastic Industries, hacked my  
8       computer in a case -- in the Staples case,  
9       the vinyl chloride case in Texas. They then  
10      shared the password with Kelly Stewart at  
11      Jones Day. Kelly Stewart of Jones Day then  
12      hacked my computer, downloaded materials that  
13      were not publicly available because my  
14      computer was password-protected.

15                   Went to the judge, told the  
16      judge I had violated a gag order. He lied to  
17      the judge. And the judge believed him.  
18      Okay? The judge issued a sanction. The  
19      sanction was more or less reversed by the  
20      Colorado Appellate Court, cert. denied to the  
21      Supreme Court of Colorado.

22                   I filed a lawsuit against  
23      Keller and Heckman, and it was thrown out on  
24      the law. It's the lead case in the

1 Millennium hacking statute. It's Egilman  
2 versus Keller and Heckman.

3 I then filed a bar complaint  
4 against Kelly Stewart in Dallas. Kelly  
5 Stewart, at the bar complaint, admitted that  
6 he had illegally hacked my computer, a  
7 federal felony, 10 years in jail and a  
8 \$50,000 fine, on videotape. No written  
9 record.

10 The bar in Dallas issued a  
11 written sanction to him, which was not to be  
12 publicly disclosed, for counseling, and found  
13 that -- I think the language was that my  
14 complaint had merit. The vote was 4 to 1.

15 So that's what happened in that  
16 case.

17 Q. When is the first time that you  
18 gave expert testimony in support of  
19 litigation? Do you recall your first case?

20 A. Yeah, my first case is Time  
21 versus OCF. It's a Third Circuit case.

22 Q. What year was that?

23 A. Third Circuit decision, I think  
24 it was '87 or '88. The case was, I think, in

1 '86.

2 Q. Do you recall the area that you  
3 were giving expert testimony on --

4 A. Yes.

5 Q. -- in that case?

6 What was it?

7 A. Well, it was the supervisor at  
8 the Hess oil refinery in St. Croix who had  
9 been exposed to asbestos and developed  
10 pleural plaques.

11 He sued Owens Corning and a  
12 variety of other asbestos product  
13 manufacturers for injuries related for the  
14 pleural disease that he got as a result of  
15 the exposure.

16 I testified -- there were two  
17 trials. There's -- in the first trial, the  
18 first trial only went to -- week and a half,  
19 and the judge got sick and unfortunately  
20 passed away.

21 I hope that doesn't happen to  
22 anybody in this case.

23 And then he -- there was a  
24 second trial, and in the second trial I

1 testified on state of the art warnings, risk  
2 communication, asbestos medicine, and a  
3 variety of other issues.

4 Q. How many times in your career  
5 have you been retained as an expert witness?

6 A. I don't know about career, but  
7 I've been retained as an expert witness in  
8 probably over 4 or 500 cases.

9 Q. And of the 4 or 500 cases that  
10 you've been retained as an expert witness,  
11 how many of those would you estimate have  
12 been as a testifying expert?

13 MS. CONROY: Object to the  
14 form.

15 THE WITNESS: Well, the ones I  
16 gave you, that's the ones based on  
17 testifying.

18 Q. (BY MR. DONOHUE) Okay. Would  
19 you add to that number if we included  
20 retentions as a consulting expert?

21 A. I've done other consulting  
22 expert work, yes.

23 Q. How many cases would you  
24 estimate you'd been retained as a consulting

1 expert?

2 A. That, I don't know.

3 Q. Would it be about the same  
4 number or less?

5 A. I do not know.

6 For example, I might be  
7 consulting with someone and I don't know how  
8 many cases there are. Somebody might be  
9 sued -- a corporation might be sued for  
10 thousands of cases. My consulting might  
11 relate to the general issues relating to  
12 thousands of cases. I don't know the answer  
13 to that question.

14 Q. I'm not asking about the number  
15 of cases. I'm asking about the number of  
16 times you've been retained as a consulting  
17 expert.

18 A. Well, okay. I don't know. I  
19 don't know that either.

20 Q. Can we go to your expert  
21 report? We've marked one of the copies 1F.  
22 Would you like a copy of that? It's got a  
23 spiral binding so it's easy to flip through.

24 A. Sure.

1 Q. And would you mind turning to  
2 page 139 of your expert report.

3 A. Okay.

4 Q. Okay. Page 139 is entitled  
5 "Prior Expert Testimony." Is this a complete  
6 list of the depositions and trial testimony  
7 you've given since 2015?

8 A. As well as I could put it  
9 together.

10 Q. Do you recall testifying in  
11 July of 2015 in a case captioned Montgomery  
12 v. Home Depot? It was in the Southern  
13 District of California.

14 A. No, I don't believe I testified  
15 in that case.

16 Q. Okay. Looking at page 139 --

17 A. What year was that case?

18 Q. 2015.

19 A. I don't recall.

20 Q. Well, if it -- if you do have a  
21 memory of it, we could add it into the list,  
22 but.

23 A. I don't have a memory of it. I  
24 can go look.

1           Q.       Turning your attention to  
2       page 139 of your expert report.

3                   In each of these listed cases,  
4       have you testified on behalf of the  
5       plaintiffs?

6           A.       No.

7           Q.       So --

8           A.       I don't testify on behalf of  
9       anybody.

10          Q.       Let me rephrase the question.

11                   With respect to the cases  
12       listed on page 139 of your report, were you  
13       retained by the plaintiffs in each and every  
14       one of those cases?

15          A.       I believe so.

16          Q.       You previously testified that  
17       you'd estimate you've been retained 4 to 500  
18       times as an expert; do you remember that?

19          A.       Yes.

20          Q.       Out of the 4 to 500 times  
21       you've been retained as an expert, in each of  
22       those cases have you been retained by the  
23       plaintiff?

24          A.       No.

1                   Q.       How many times have you been  
2 retained by the defendant in those 4 to 500  
3 cases?

4                   A.       Probably 150. 200.

5                   Q.       When is the last time you  
6 recall being retained by a defendant as an  
7 expert in litigation services?

8                   A.       Yesterday or the day before.

9                   Q.       What case is that?

10                  A.       I don't remember the case.  
11 It's a Viking Pump case. I don't know the  
12 name.

13                  Q.       A Viking Pump?

14                  A.       Viking Pump.

15                  Q.       And putting aside your  
16 retention yesterday, when is the last time  
17 you recall being retained by a defendant as  
18 an expert?

19                  A.       The week before.

20                  Q.       In the last four to five years,  
21 have you testified on behalf of a defendant?

22                  A.       I don't testify on behalf of  
23 defendants or plaintiffs.

24                  Q.       Have you testified in any case



1 in the past four years where you were  
2 retained by a defendant?

3 A. No, because it would be here.  
4 But I have in the past.

5 Q. So when is the last time you  
6 recall testifying as an expert when you've  
7 been retained by a defendant?

8 A. Probably about five --  
9 actually, no, there's -- there must be a case  
10 missing because I think two years ago, I gave  
11 a deposition at the request of a plaintiff in  
12 a defense case, so there's one case specific.  
13 So that's probably about two years ago.

14 Q. So your answer said you gave a  
15 deposition at the request of a plaintiff in a  
16 defense case?

17 A. Well, I was working for  
18 Viking Pump, the defendant. I was deposed by  
19 the plaintiff.

20 Q. Got it. You mentioned the  
21 Viking Pump cases. Do you recall any other  
22 defendants that have retained you as an  
23 expert?

24 A. Yes.

1 Q. What other defendants?

2 A. Well, the ones that I mentioned  
3 when I first met Ms. Conroy. She retained me  
4 at the request of Federal-Mogul. Turner &  
5 Newall was the underlying company, but  
6 Federal-Mogul, I think was the owner. So  
7 those three cases were Federal-Mogul cases.

8 Then I've done -- I did an A.E.  
9 Smith boiler case.

10 I did a variety of workers'  
11 compensation cases when I was running the  
12 clinic in Braintree.

13 I did a lead case when I was  
14 running the clinic in Braintree.

15 I did some other -- I think  
16 it's one or two other boiler manufacturer  
17 cases. I'm sorry, pump manufacturer cases.

18 That's what I can remember.

19 Q. So your testimony is that out  
20 of the 4 to 500 cases where you've been  
21 retained, approximately 150 to 200 of those  
22 you were retained by the defendant to be an  
23 expert?

24 A. Think you're -- the 4 to 500

1       are cases I gave testimony in. Okay? The  
2       100 to 150, or whatever I gave for a number  
3       for the defense cases, the cases I've been  
4       retained in, in most of those cases, aside  
5       from two or three of those cases, maybe four  
6       of them, maybe five, I did not give testimony  
7       in those cases. Those cases settled. But I  
8       was retained and gave reports in all those  
9       cases.

10               Q.       Okay. So let me go back.

11                       Out of the 4 to 500 cases where  
12       you have testified as an expert, how many of  
13       those cases have you testified when you've  
14       been retained by a defendant?

15               A.       Probably 10 or so.

16                       Well, no, wait. I gave you  
17       some others. So maybe 10 to 15.

18               Q.       And you mentioned that you  
19       believe, putting aside whether you testified  
20       as an expert or not, "I've been retained by  
21       defendants in 150 to 200 cases"; do I have  
22       that right?

23               A.       Correct. Or more. I currently  
24       have about 50 or 60 cases for Viking Pump.

1 And I've been working for them for five or  
2 six years, and probably that's my average  
3 caseload for them over that time period. So  
4 I may have underestimated the total number of  
5 Viking Pump cases that I've done, I've been  
6 retained over the last four or five years,  
7 but that's my best estimate.

8 Q. So how many cases have you been  
9 retained as an expert by plaintiffs?

10 A. That, I don't know. Mostly --  
11 mostly the plaintiff cases I'm retained in, I  
12 give depositions and they go to trial. Not  
13 all. I'd say the overwhelming majority go to  
14 trial, so most of that number went to trial.

15 I mean, that's just the way it  
16 is.

17 Q. With respect to your retention  
18 in this engagement, how many cases have you  
19 been retained as an expert by the plaintiff?

20 In other words, how do you  
21 count up the number of cases for this  
22 engagement since you testified that you have  
23 been engaged in the MDL?

24 A. Again, I do not know what that

1 question means.

2 Q. In your past as a testifying  
3 expert, has any court excluded your proposed  
4 expert testimony?

5 A. Yes.

6 Q. How many times has a court  
7 excluded your testimony as an expert witness?

8 A. Once.

9 Q. And what case was that?

10 A. That's the popcorn case in  
11 Spokane.

12 Q. Any other time?

13 A. No.

14 Q. Have you ever withdrawn as an  
15 expert in litigation after you've been  
16 retained?

17 A. I'm not sure I understand that  
18 question.

19 Q. In any of the 4 to 500 cases --  
20 no, strike that.

21 In any of the cases where  
22 you've been retained as an expert, have you  
23 withdrawn from those cases prior to  
24 testifying as an expert?

1           A.       Not that I can recall.

2                   I mean, I've not -- in cases  
3       that I've been retained and given testimony  
4       at a deposition, I've not always testified.

5           Q.       Right. But I'm wondering if  
6       you recall ever, after a, for example, a  
7       motion to exclude you has been filed, you  
8       withdrawing as an expert in that case.

9           A.       Do you mean me? Me sending a  
10      letter saying I withdraw? Or me telling a  
11      lawyer I withdraw?

12          Q.       Have you ever --

13          A.       Is that what you mean?

14          Q.       Well, let's start with that.  
15      Do you recall any case --

16          A.       That's never happened. That I  
17      can recall.

18          Q.       Do you recall any case where,  
19      after a motion to exclude has been filed  
20      against your proposed testimony, where the  
21      lawyer that retained you has withdrawn you  
22      from the case?

23          A.       I don't know.

24          Q.       Don't recall?

1           A.       I don't know.

2           Q.       So if we could go to your  
3       report again, and what we've marked as  
4       Exhibit 1F, which is in front of you. Could  
5       you confirm that this looks to be a complete  
6       copy of your report? I understand there's  
7       not the exhibits, but at least your report?

8                   MS. CONROY: Objection.

9                   THE WITNESS: How am I going to  
10       do that?

11          Q.       (BY MR. DONOHUE) Okay. We'll  
12       do it a different way. Could you turn to  
13       page 141?

14                   And this is a page entitled  
15       "Signature."

16                   Is that your signature?

17          A.       It is.

18          Q.       And the first sentence states  
19       that this is a report -- excuse me. "This  
20       report is a statement of opinions I expect to  
21       express in this matter and the basis and  
22       reason for those opinions."

23                   Do you see that?

24          A.       Yes.

1 Q. And is that accurate?

2 A. You read that correctly, but it  
3 should -- understand that these are opinions  
4 that I expect to express at this deposition.

5 I don't think I'm going to give  
6 these opinions in court.

7 Q. And why don't you think you're  
8 going to give all of the opinions in court?

9 A. Well, for one thing, I think we  
10 don't have five years to try the case.

11 That would be the number one  
12 reason. I know I wouldn't give all of these  
13 opinions.

14 Q. Looking at the opinions in your  
15 report, do you know which opinions that you  
16 will be testifying at trial about, if  
17 allowed?

18 MS. CONROY: Objection.

19 THE WITNESS: I -- as you know,  
20 I've done some cases with Mr. Lanier,  
21 and he always surprises me.

22 So I don't have a clue.

23 Q. (BY MR. DONOHUE) So, before we  
24 go back to that, let's put on the record what



1     your opinions are in this report so we make  
2     sure we're all on the same page.

3                     Let's start with the  
4     definitions that you use which are on page 51  
5     of your report.

6             A.       Okay.

7             Q.       Now, with respect to definition  
8     4.4, which is the, quote, Venture, capital V,  
9     end quote, you write that "The Venture refers  
10    to all defendants in the opioid litigation."

11                    Do you see that?

12            A.       I do.

13            Q.       What do you mean by "the opioid  
14    litigation"?

15            A.       Well, I mean this case.

16            Q.       Now, are you aware of the  
17    opioid manufacturers that are named as  
18    defendants in this case?

19            A.       Yes.

20            Q.       What about -- are you aware  
21    that there are opioid manufacturers that are  
22    not named as defendants in this case?

23            A.       Yes.

24            Q.       Are the opioid manufacturers

1       that are not named as defendants in this case  
2       part of the venture as you've defined it?

3             A.       I do not know.

4             Q.       How come you don't know?

5             A.       Because I don't have any  
6       information on them. There's no discovery  
7       that I've seen.

8             Q.       Is it possible that opioid  
9       manufacturers that are not listed as  
10      defendants in this case are part of what  
11      you've defined as "the venture"?

12            A.       Yes. Anything is possible.

13            Q.       So you haven't undertaken any  
14      analysis of whether manufacturers of opioids  
15      not named as defendants in this case are  
16      acting in concert with the manufacturer  
17      defendants that are named in this case?

18                    MS. CONROY: Objection.

19                    THE WITNESS: No, I searched  
20      the database, but there was -- there  
21      are no relevant documents on that  
22      issue on -- produced by other parties.

23                    I can't know what people were  
24      doing unless I have depositions and

1 documents.

2 Q. (BY MR. DONOHUE) Well, in any  
3 of the depositions and documents that you  
4 reviewed as part of this engagement, did you  
5 see references to other entities or  
6 individuals that were not named as defendants  
7 in the case?

8 A. I don't recall.

9 Q. And what is the time period  
10 that you have used to describe the venture,  
11 as you've defined it on page 51 of your  
12 report?

13 A. I didn't use a time period, but  
14 I guess there's kind of two time periods. So  
15 I'll go to the hockey stick.

16 So I would say that the time  
17 period for the massive overuse began in 1996,  
18 the introduction of Purdue's drug.

19 However, there was some  
20 beginning activities, by members of the  
21 venture, as early as 1984, when Purdue  
22 illegally marketed MS CONTIN.

23 So I would say that that --  
24 that was the first act that was part of the

1       concerted activity that led eventually do  
2       this breakout in 1996.

3               Q.       And what is the date of the  
4       first act that you just testified to?

5               A.       It was 9 -- in 1984 Purdue  
6       started to market MS CONTIN. And that was  
7       illegally marketed. It was not an approved  
8       drug by the FDA.

9               Q.       And they --

10              A.       And they sold 770,000 pills, I  
11      believe, before the FDA caught that.

12                      MR. DONOHUE: I'll move to  
13      strike as nonresponsive everything but  
14      the date.

15              Q.       (BY MR. DONOHUE) You said that  
16      as part of the first act, members of the  
17      venture acted together. What other members  
18      of the venture do you believe acted together  
19      in 1984?

20              A.       The only member of the venture  
21      in '84 was Purdue. I believe that was --  
22      Purdue was the only member.

23              Q.       If you turn to page 52 of your  
24      expert report, marked as Exhibit 1F.

1                   And we'll go back to some of  
2     these areas. I just want to get a high-level  
3     view of your expert report.

4                   So page 52 is entitled "Capsule  
5     of Opinions."

6                   Do you see that?

7           A.       I do.

8           Q.       Is the capsule of opinions  
9     intended to be a summary of your overall  
10    expert opinion?

11          A.       Oh, it's kind of like the  
12    highlights.

13          Q.       So is it the highlights of what  
14    is contained in the following opinions in  
15    your expert report?

16          A.       It's the highlights of the  
17    entire report.

18                   So I guess you could call it,  
19    in terms of a movie, the -- like the little  
20    things they show to encourage you to go to a  
21    movie?

22          Q.       The trailer?

23          A.       Yeah, it's like a trailer.

24          Q.       Then if you'd turn to page 53,

1       you have as numeral 6, a title "In 2004, I  
2       warned about the crisis; I was ignored."

3                       Do you see that?

4               A.       Yeah.

5               Q.       Is that an opinion that you  
6       intend to offer, if allowed, in this case?

7               A.       It's an opinion I have.

8                       I don't have any intention -- I  
9       don't get to decide what questions are asked,  
10      and I don't get to decide if a question is  
11      asked whether I'm allowed to answer it.

12                      All I have here, just to maybe  
13      speed it up is my opinions. Okay?

14                      I don't know what's going to  
15      happen in court.

16              Q.       So with respect to No. 6, "In  
17      2004, I warned about the crisis; I was  
18      ignored," fair to say that's an opinion  
19      that -- an expert opinion that you've  
20      expressed in your expert report?

21              A.       Correct.

22              Q.       And when did you form that  
23      opinion?

24              A.       Well, 19 -- 2004.

1           Q.       Okay. And then, I just want to  
2       make sure I'm reading this right. So  
3       underneath the statement in 2004, I warned  
4       about the -- "I warned about the crisis; I  
5       was ignored," there's, from page 53 to 61  
6       paragraphs. My question is, are those  
7       paragraphs contained in the pages of your  
8       report separate opinions? Or are they  
9       supporting material for your opinion about  
10      warning of the crisis?

11           A.       I think that's a metaphysical  
12      question. I'm not sure I'm capable of  
13      answering it.

14                    I would say it certainly  
15      supports the opinion in 6, but some of them  
16      are separate opinions. So they're opinions  
17      that explain the entire set of what goes into  
18      the Opinion 6.

19           Q.       Okay. And then, with respect  
20      to the additional opinions that you have  
21      formed since 2004, those start on page 62 of  
22      your report.

23                    MS. CONROY: Objection.

24           Q.       (BY MR. DONOHUE) Do I have

1       that right?

2               A.       I don't know how to answer  
3       that. I have to go through some of these. I  
4       may have said -- I may have had some of these  
5       opinions -- this is all of the opinions,  
6       right? -- that you're referring to? All of  
7       the opinions for that question? All of the  
8       rest of the -- all of the rest up to 137 or  
9       whatever it is? Is that a question for all  
10      of the opinions from page 62 to 137?

11             Q.       I was attempting to ask if this  
12      was the -- all of the opinions that you have  
13      since 2004 that are contained in your expert  
14      report.

15             A.       Yeah, what I'm saying, I may  
16      have had some of those opinions before --

17             Q.       Okay.

18             A.       -- 2004.

19             Q.       Okay. Could you --

20             A.       I don't recall.

21                     I don't recall, and I never  
22      analyzed them by date. So in order to answer  
23      that question, I need to go through and read  
24      them.



1 Q. Okay.

2 A. I think most of these opinions  
3 relate to material that I got in discovery in  
4 this litigation. I may have had some of  
5 these opinions in a general way before 2004.

6 Q. Let me ask you this. Would you  
7 please go through the opinions contained on  
8 Section 7 in your report and tell us what  
9 opinions, if any, you formed prior to this  
10 engagement?

11 A. Well, 7.3, I was certainly  
12 aware of prior to this engagement of the  
13 \$80 million penalty that Walgreens paid for  
14 Jupiter and other things. And that's --  
15 could be part of the basis of 7.3.

16 MR. DONOHUE: Can we take a  
17 break, take our first break?

18 MS. CONROY: Let's just be --  
19 I'm fine with a break, but let's just  
20 be clear what he's looking for. You  
21 want to know which of the 137 opinions  
22 were formed after his retention in  
23 this case in November of 2019 -- of  
24 2018?

1 THE WITNESS: The opposite.

2 Before. He wants to know before.

3 MR. DONOHUE: Before.

4 MS. CONROY: And that's what  
5 you want him to determine --

6 MR. DONOHUE: Yes.

7 MS. CONROY: -- during the  
8 break?

9 MR. DONOHUE: Yes. If any.

10 THE WITNESS: No, I'm not going  
11 to do that during a break.

12 MR. DONOHUE: Well, we can take  
13 a longer break.

14 THE WITNESS: I'm not going to  
15 do that during a break. When there's  
16 a break, there's a break. I'm not  
17 working during the break. I have  
18 union rules.

19 MR. DONOHUE: All right. We'll  
20 wait for Special Master Cohen to get  
21 back.

22 SPECIAL MASTER COHEN: I'm  
23 right here.

24 You know, if the break is for

1           us to break, it's for us to go to the  
2           bathroom and take a rest. And he  
3           doesn't need to spend 10 or 15 or  
4           20 minutes, unless you want to take a  
5           long break. But some of that's going  
6           to have to take away from your time.

7                       MR. DONOHUE: Okay. So, in  
8           other words, have him do it on the  
9           record?

10                      SPECIAL MASTER COHEN: That's  
11           probably better.

12                      MR. DONOHUE: All right.

13                      So I would like you to do that.  
14           I'll just restate the question.

15                      Q.       (BY MR. DONOHUE) Would you  
16           please go through your opinions and tell us  
17           what opinions, if any, that you formed prior  
18           to this engagement?

19                      A.       Okay.

20                      I'm going to have you help me.  
21           I have venture members.

22                      [Document review.]

23                      MR. DONOHUE: Do you want to  
24           know what? I will -- Special Master

1 Cohen, I will withdraw the question so  
2 we can take a break.

3 SPECIAL MASTER COHEN: Okay.

4 MR. DONOHUE: Thank you. Off  
5 the record, please.

6 THE VIDEOGRAPHER: Off the  
7 record. 10:51.

8 (Recess taken, 10:50 a.m. to  
9 11:23 a.m.)

10 THE VIDEOGRAPHER: We are back  
11 on the record at 11:24.

12 MR. DONOHUE: For the record,  
13 we're going to mark as Deposition  
14 Exhibit No. 2, a copy of the poster  
15 board that's entitled "Deconstructing  
16 the myth that prescribed opioids have  
17 a low risk of addiction" that  
18 Dr. Egilman pointed to earlier. And  
19 so we'll get a copy of that, an 8 by  
20 11, hopefully, and just mark it for  
21 the record as Exhibit No. 2.

22 MS. CONROY: And for the  
23 record, I will state when you reduce  
24 that to 8 by 11, it's illegible. So

1           if it's -- we can get people an  
2           electronic copy or whatever, but just  
3           be advised that when you get home and  
4           you take a look at it, it can't be  
5           read.

6                       MR. DONOHUE: All right.  
7           Appreciate that.

8                       THE WITNESS: So you want me to  
9           continue my answer?

10                      MR. DONOHUE: No. I withdrew  
11           that question.

12                      (Whereupon, Deposition Exhibit  
13           Egilman 2, Poster (8.5 x 11 copy)  
14           Deconstructing the myth that  
15           prescribed opioids have a low risk of  
16           addiction by Daniel K. Cho, Mark  
17           Hocavar, Brown University, was marked  
18           for identification.)

19           Q.        (BY MR. DONOHUE) With respect  
20           to your expert report, did you receive all of  
21           the documents that you needed to reach the  
22           opinions in your expert report?

23           A.        No.

24           Q.        Okay. What documents didn't

1       you receive that you needed to reach your  
2       opinions?

3               A.       I think I got some -- I think I  
4       got an -- okay. So I got a thing on  
5       limitations in my report. I couldn't review  
6       missing or destroyed documents, so they were  
7       missing and destroyed documents.

8               I couldn't review documents  
9       that were withheld as, quote, nonresponsive.  
10      Some of the documents were produced even  
11      though confidential with nonresponsive  
12      blanks.

13              I couldn't review documents  
14      that would help based on a privilege claim.

15              I couldn't review redacted  
16      language that was in a lot of the  
17      confidential documents.

18              I didn't review correspondence  
19      in non-produced personal e-mails. So there  
20      were several participants who had a variety  
21      of e-mails that weren't produced. Something  
22      that said text messages. There were no text  
23      messages produced.

24              Purdue had a system of removing

1 information from call notes, so I couldn't  
2 review things that were removed.

3 I didn't have access to all of  
4 the documents produced in all the state  
5 litigation.

6 I didn't have the monitoring  
7 reports that were part of the corporate  
8 integrity agreements. I didn't have all of  
9 the corporate integrity agreements. I didn't  
10 have any -- oh, I'm sorry, I had Cephalon  
11 hotline reports related to the CIA, but I did  
12 not have any of the other CIA-associated  
13 monitoring reports, ethics hotlines, or other  
14 related documents.

15 Q. So the opinions in your expert  
16 report are based on incomplete information?

17 MS. CONROY: Objection.

18 THE WITNESS: Well, they're  
19 based on the information that I had.  
20 I can't know if the information that's  
21 been destroyed would have impacted on  
22 my opinions one way or the other.  
23 It's a limitation that you asked me if  
24 I -- I answered the question you

1           asked. The implications of things I  
2           didn't see, I can't answer. I don't  
3           know how they may or may not have  
4           altered an opinion I had.

5           Q.       (BY MR. DONOHUE) Since  
6           March 25th, 2019, which is the date of your  
7           report, have you formed any additional  
8           opinions as an expert?

9           A.       No, but I have additional bases  
10          for opinions.

11          Q.       What's the additional bases you  
12          have for opinions since March 25, 2019?

13          A.       Well, I may have some  
14          additional -- yeah, additional bases, so.

15                  Let's see. There's an  
16          additional bases folder here.

17                  Well, let me -- I mean, let me  
18          go -- we can look for it.

19                  I can start with a -- I read  
20          the appendix to Perri's report, where he goes  
21          through more of the call notes and other  
22          communications that companies made to  
23          physicians and other parties. So that's one  
24          category.



1 I don't think I listed this,  
2 which I call the mushroom document, as part  
3 of the basis for my opinion that the  
4 physicians were not responsible for the  
5 hockey stick.

6 This is an e-mail from Kathe  
7 Sackler -- to Kathe Sackler, Wednesday,  
8 August 6, 1997.

9 Oh, yes. Here's the new basis.  
10 Do you have that? She found it.

11 Okay. So this is J&J Pain  
12 Council Meeting, December 6, 2006.

13 And then some additional bases  
14 for 135, which is a CVS marketing agreement  
15 with Endo.

16 So there's --

17 Q. Would you do me a favor and  
18 just read the Bates numbers of those  
19 documents into the record so we'll have a  
20 record of what you're referring to?

21 A. Sure. JAN-MS-00494367, and  
22 then Endo Opioids MDL-06157733. Then the  
23 Insys material that came out during the  
24 Boston trial, I haven't seen all of the

1 transcripts of that trial, but I've read  
2 reports of that trial, sometimes quotes from  
3 testimony from that trial.

4 So that would be additional  
5 opinions related to that.

6 And the same thing would be  
7 true for the general -- although Rochester is  
8 not a defendant in this case, you asked about  
9 other people. I wasn't aware of what  
10 Rochester had done until the recent press  
11 coverage and pleading against them for  
12 various bad acts with respect to the  
13 uncontrolled distribution of drugs to their  
14 customers.

15 Then I have -- I did bring -- I  
16 don't think I brought with me, but I have --  
17 as you know, I had the Robert Wood Johnson  
18 opinion. And yesterday I got, probably 4 or  
19 5,000 pages of more detail on Robert Wood  
20 Johnson Foundation, board of directors, their  
21 bios of their contacts with primarily Johnson  
22 & Johnson as the corporate entity in terms of  
23 the overlapping board of directors of Robert  
24 Wood Johnson Foundation.

1 I think the Ohio hockey stick.

2 No. 7. How about this 6, then. So this is a  
3 Summit County PowerPoint. And it's -- you  
4 know, it came in native form, so I don't have  
5 the Bates number.

6 I can identify it -- this is  
7 the first page. It's in the production. So  
8 that's the first page of it. The first page  
9 says "Facing the Opioid Epidemic. How we got  
10 here and what we need to do next." And it  
11 was by Christina Delos Reyes. It's titled  
12 "The Role of the Physician, Prescription Drug  
13 Abuse. Akron General Wellness Center,  
14 May 31, 2014."

15 And it has an Ohio-specific  
16 hockey stick chart in it, along with the  
17 specific -- some of the specific marketing  
18 activities that trail the hockey stick.

19 So ...

20 Q. Does the mushroom document have  
21 the Bates number?

22 A. Mushroom. Yeah, mushroom.

23 It's over here. Bates number  
24 for the mushroom. PDD\_8801118262.

1

2                   Let's take a quick look. I  
3 think that's it.

4           Q.       Okay. Could we go --

5           A.       Just let me finish taking a  
6 quick look to see if there's anything else --

7           Q.       Oh, I apologize.

8           A.       -- on the table.

9                   Yeah, I think 6 is slide deck.

10                  So this is another bases. I  
11 have an opinion on slide deck creation, and  
12 this is just another company's same  
13 activities. This is Bates numbers  
14 acquired\_activists\_00367447.

15                  Let me see this. What is that?  
16 This is the "See no evil" document. I think  
17 this is not in the report. This is  
18 Endo\_0064825.

19                  I think that's it.

20           Q.       Okay. Could we go back to your  
21 report, which we've marked as Exhibit 1F.  
22 And go to page 29, which is your background  
23 and qualifications?

24           A.       Okay.

1           Q.       Okay. And so I think you  
2 testified earlier you're currently a -- still  
3 a medical doctor; right?

4           A.       Correct.

5           Q.       And if we turn to page 31, you  
6 have a paragraph about the middle of the page  
7 where you talk about warnings.

8                    Would you consider yourself an  
9 expert in warnings?

10          A.       Yes.

11          Q.       Are you familiar with TIRF  
12 REMS?

13          A.       I'm familiar with REMS  
14 programs.

15          Q.       Okay. What do you know about  
16 the REMS program?

17          A.       Well, what I'm -- when  
18 evaluated -- there's been several recent  
19 papers on the REMS programs in the last year.  
20 And -- do you really want me to -- ask me  
21 what I know about the REMS program? Because  
22 that's a very, very long answer.

23          Q.       No, I appreciate that.

24          A.       I'd be glad to give you that

1       answer, okay, but --

2               Q.       Let me withdraw that and ask a  
3       different question.

4               A.       Okay.

5               Q.       Did you consider the TIRF REMS  
6       program in rendering the expert opinions in  
7       your report?

8               A.       I think so.

9               Q.       You testified that you consider  
10      yourself an expert in warnings.  What other  
11      areas do you believe you have expertise in?  
12      If any.

13              A.       Well, do you want to define  
14      "expert"?

15              Q.       What other areas do you believe  
16      you're qualified to testify as an expert in  
17      litigation other than warnings?

18              A.       That's the --

19                      MS. CONROY:  Objection.  Legal  
20      opinion.

21                      THE WITNESS:  -- up to the  
22      judge.  If you don't want to define  
23      expert, I will.

24                      My understanding of the

1 definition of expert in this context  
2 is that I know more than the layman  
3 and can assist the jury in  
4 understanding the issues in the case  
5 beyond the ability of the normal  
6 layman to understand the material that  
7 I read, review, consider, and  
8 generally summarize. So that -- if  
9 that's the definition of expert, I'll  
10 go ahead and answer that question.

11 So an expert in internal  
12 medicine. Occupational environmental  
13 medicine and toxicology. I'm an  
14 expert in molecular biology. I'm an  
15 expert in warnings and risk  
16 communication.

17 All aspects of public health.  
18 Public health includes two, kind of,  
19 components. The first component of  
20 public health is trying to figure out  
21 what makes people sick, and the second  
22 is what makes people healthy.

23 Actually, that's two components  
24 of the first question of the public

1 health.

2 The second issue with respect  
3 to public health is getting people to  
4 change their behavior to use the  
5 information in part one.

6 I am an expert in the aspects  
7 of part one. Those aspects being,  
8 generally, molecular understanding of  
9 cause-effect relationships, the  
10 epidemiology, toxicology. The -- then  
11 at a higher level, a social and  
12 cultural aspects of the causes of  
13 disease.

14 So there's -- which is not a  
15 lot of academic work in that area.

16 Then the other part of public  
17 health is to take the information that  
18 we've gathered from part one, and try  
19 to get people to change their  
20 behavior, to stop doing things that  
21 you've determined cause disease, and  
22 to get them to do things that promote  
23 health and longevity.

24 And at a patient level -- and



1           there are two levels for those  
2           interventions. At least two levels.

3                     One level is with respect to  
4           things that impact on the individual  
5           at an individual level. So that  
6           involves -- I'll give you the  
7           occupational environmental construct  
8           of that in hierarchy.

9                     So the first thing to do -- and  
10          I'll try to give you some relevant  
11          examples as we go along.

12                    MR. DONOHUE: I'm only  
13          interested in what you think you're as  
14          an expert. So you seem to be straying  
15          into a long explanation about those.  
16          Can you do it more briefly, please?

17                    MS. CONROY: Objection.

18                    THE WITNESS: Is that -- is  
19          that an objection to the answer -- I  
20          don't understand what that was.

21                    Q.        (BY MR. DONOHUE) I'm asking  
22          you to summarize instead of giving detailed  
23          answers in the areas where you believe you  
24          have expertise. So I understand you have

1 expertise, you believe, in public health, and  
2 you explained that.

3 A. I didn't finish explaining  
4 that. There's many aspects of public health,  
5 and I've given you the aspects of public  
6 health, which --

7 Q. If you could do it in list  
8 form, that would be more helpful and  
9 efficient.

10 MS. CONROY: Objection.

11 THE WITNESS: Okay. Well, I'm  
12 going to try to give it to you in the  
13 form that I understand it. Okay? And  
14 so they have -- this is how I explain  
15 it when I'm in court, for example.

16 So the hierarchy from the --  
17 and because this is -- it's an  
18 expertise -- the expertise -- I'll  
19 start making sense with expertise, to  
20 make sure it's exactly relevant. The  
21 expertise is in the first hierarchy of  
22 changing what people do is  
23 substitution of a safer, for a more  
24 dangerous product.

1                   So in the case of opioids, it  
2                   would be the study of the various ways  
3                   that one could treat pain that would  
4                   not -- that would diminish the risk of  
5                   addiction. That's an expertise.  
6                   That's a way of looking at  
7                   cost-benefit analyses, looking at all  
8                   the side effects, et cetera.

9                   So if you don't substitute,  
10                  then the next level down, which I have  
11                  expertise in, is in trying to avoid  
12                  the exposures in an administrative  
13                  fashion. And so that would be -- in  
14                  the case of opioids, figuring out how  
15                  you can control the use of opioids by  
16                  controlling physician prescriptions,  
17                  educating the public, et cetera.

18                  And I have expertise in that  
19                  with respect to opioids and general  
20                  expertise with respect to public  
21                  health.

22                  So that -- pretty much from an  
23                  opioid perspective, those are the  
24                  expertises from public health. That's

1           at the micro level as it applies to  
2           the patient.

3                   Then at the macro level, that's  
4           changing policy. Okay? And so I have  
5           some expertise in social change, how  
6           social change occurs at a macro level.

7                   And I teach about that.

8                   And that means how you create  
9           social movement to change ideas in the  
10          society. And those general ideas  
11          might change the effect of how people  
12          get treated in this case for pain.

13                  And that involves legislative  
14          interventions, community organizing,  
15          et cetera. I have expertise in that.

16                  And it also involves, at a  
17          macro level, trying to influence ideas  
18          in a society about appropriate care  
19          and appropriate achievement.

20                  And that's done through a  
21          variety of mechanisms, the current era  
22          that involves an element of social  
23          media and academic publication and  
24          some combination thereof.

1                   So that's roughly the public  
2                   health expertises that relate to this  
3                   case.

4                   For example, you know, I gave  
5                   the presentation to the FDA that  
6                   involves both understanding the  
7                   mechanism of addiction from a -- the  
8                   way that -- the relationship of the  
9                   dosing system to the addiction. And  
10                  also I went to the FDA to try to  
11                  impact on policy.

12                  So I'm working on policy issues  
13                  with respect to talc and other things  
14                  at a state and local and national  
15                  level. So I have expertise in that  
16                  and I teach about that.

17                  I'm an expert in Hill  
18                  considerations in epistemology,  
19                  E-P-I-S-T-E-M-O-L-O-G-Y. And that's  
20                  how we know what we know.

21                  From a scientific perspective.  
22                  Then this how we know what we believe,  
23                  that's involves sociology,  
24                  anthropology aspects and public policy

1 issues.

2 I'm an expert in pharmaceutical  
3 and other medical products of  
4 marketing practices, and I've  
5 published on that.

6 Of course I think we went  
7 through I'm an expert on warnings.

8 I'm an expert on evaluating the  
9 side effects of pain medications, and  
10 using secret corporate documents and  
11 data. That, per se, is an expertise,  
12 to try to get information out about  
13 the health effects and side effects of  
14 pain medications.

15 And I've done a little bit with  
16 respect to opioids, to the extent that  
17 the documents are not confidential,  
18 and I've done a lot with respect to  
19 other pain medicines, like Vioxx.

20 I'm also an expert in how  
21 corporations evaluate the efficacy of  
22 their market and control and follow  
23 what they and their competitors say  
24 about their products.

1                   So, for example, I've reviewed  
2                   PMRD and research data, analyzed that  
3                   data and published on that data.

4                   I'm an expert --

5                   MR. DONOHUE: I'm going to  
6                   object. Special Master Cohen, I'm  
7                   going to ask you to direct the witness  
8                   to answer the question in a summary  
9                   fashion without -- for using words  
10                  like, "for example," in an attempt to  
11                  filibuster a question. Which,  
12                  although I recognize, as stated was  
13                  somewhat broad, I have also made it  
14                  clear that I'm interested in a summary  
15                  of the areas he believes he has  
16                  expertise in, not on a what has now  
17                  been a 15-minute speech.

18                  MS. CONROY: Your Honor, this  
19                  was not a speech. It was an answer to  
20                  a question that was asked by a  
21                  defendant, and I would also comment  
22                  that the defendants have made it very  
23                  clear there will be Daubert motions  
24                  filed in this case that will directly

1           bear on the expertise of a witness.

2                       And so to try to cut down an  
3           answer that you asked with respect to  
4           expertise is rather alarming, given  
5           what's coming in June.

6                       SPECIAL MASTER COHEN:   So the  
7           defendants are free to ask no  
8           questions and get no information.   And  
9           if they choose to ask a question and  
10          limit it, they're allowed to do that.

11                      What I think happened here was  
12          that the defendant asked for a list of  
13          areas of expertise.   Two examples are  
14          social policy and epistemology.   I  
15          can't say that.   I just said that in  
16          five words.

17                      So somewhere between a short  
18          list and a long explanation of what  
19          each one of those means is how this  
20          has to happen.

21                      They're entitled to ask you to  
22          restrict your answers, Dr. Egilman, in  
23          a way that provides only what they're  
24          asking.   That's their choice.



1           Frankly, maybe it would be better for  
2           them to get more information from you,  
3           but they're entitled not to do that.  
4           So if they want succinct answers,  
5           that's what you need to give them.  
6           Okay?

7                       THE WITNESS:   Okay.

8                       MS. CONROY:   Thank you.

9                       SPECIAL MASTER COHEN:   Okay.

10           Q.        (BY MR. DONOHUE)   Do you have  
11           any other additional areas to list to  
12           complete your answer with respect to your  
13           expertise?

14           A.        Why don't you go back and  
15           re-ask the question.

16           Q.        The question was what areas do  
17           you believe that you have expertise in.   And  
18           I had asked for a list of those areas.

19           A.        Here, I'm having a little  
20           trouble given the ruling.

21                       So, you know, I've published on  
22           a lot of health effects of a lot of different  
23           substances, peer-reviewed papers.   Okay?   So  
24           you want me to just say that I've published

1 on the health effects of a lot of substances  
2 and the side effects of a lot of things? Is  
3 that all you want?

4 Q. If that is responsive to the  
5 question, if it's true.

6 A. Well, what's responsive to the  
7 question I'm going to give you the detail of  
8 each of the substances that I'm an expert in.  
9 I'm not an expert in every toxic substance.  
10 Okay? I'm an expert in the ones that I have  
11 studied, reviewed, published on. So  
12 that's --

13 I mean, I don't --

14 I mean, I can just -- I mean, I  
15 can refer you to my CV. Why don't I  
16 incorporate my CV, and that saves a lot of  
17 time?

18 Q. Okay.

19 A. In addition to that, I'm an  
20 expert on international health and the  
21 development of medical schools in developing  
22 countries.

23 I'm an expert in minority  
24 recruitment to medical schools.

1 I'm an expert in the  
2 organization of non-profits, the rules and  
3 regulations of non-profits.

4 I think that's it for general  
5 categories.

6 Q. Do you consider yourself an  
7 expert on the FDA's regulations concerning  
8 pharmaceutical marketing?

9 A. Yes.

10 Q. Do you consider yourself an  
11 expert in pain management?

12 MS. CONROY: Objection.

13 THE WITNESS: Well, I consider  
14 myself an expert in treating people  
15 who have pain for diseases.

16 Certain diseases. Not all  
17 diseases.

18 Q. (BY MR. DONOHUE) Do you have  
19 any clinical experience in pain management?

20 A. Well, I have a lot of clinical  
21 experience treating people for pain from  
22 various diseases, yes.

23 Q. Have you done any research  
24 relating to pain management and the use of

1       opioids to treat pain?

2               A.       Yes.

3               Q.       What research have you done?

4               A.       Well, in terms of published  
5       research? I have the work I did -- I think I  
6       published -- presented APHA in the FDA  
7       presentation. The rest of the research  
8       involves reading literature over time and  
9       reading the corporate documents, initially  
10      the Purdue documents between 2003, 2005, and  
11      then the last several years -- well, the last  
12      several months reading all of your documents.

13                      In addition, I've read --  
14      reviewed opioid literature over time. That's  
15      published literature.

16              Q.       As part of this engagement, did  
17      you conduct any quantitative analysis to  
18      determine whether defendants' marketing  
19      influenced any prescribing decision?

20              A.       Do you mean from a particular  
21      prescriber? Or a particular practitioner?

22              Q.       Yes.

23              A.       Yes.

24              Q.       What quantitative analysis did

1       you do?

2               A.       Well, I reviewed the ROI data  
3       and the detailed reports from many of the  
4       defendants. And that -- that all -- some of  
5       it was specific to specific physicians.

6               I remember it was -- it was one  
7       physician whose name came up in the SIG  
8       affiliated with impact who was a high user,  
9       and somebody saw his name and sent marketing  
10      people to that person. There's the document  
11      that talks about no sex, no prostitutes. So  
12      that refers to successful marketing  
13      intervention with a particular doctor's name.  
14      I don't remember.

15              I don't think that was a  
16      formula. I think it was a particular doctor.

17              So there is a whole slew of --  
18      and also some of this is in Perri's report,  
19      of indications from detail reps that their  
20      work with a rep, with a physician increased  
21      that physician's prescribing of opioids.

22              Q.       Are you board certified in  
23      internal medicine in preventive occupational  
24      medicine?

1           A.       Yes.

2           Q.       And I see from page 30 of your  
3 expert report that you say you ran a clinic  
4 for 12 to 13 years.

5           A.       Right.

6           Q.       What years were those that you  
7 ran the medical clinic?

8           A.       '89 to 2002.

9           Q.       Were you a family medicine  
10 doctor during that time in clinic?

11          A.       In part. I had three general  
12 activities.

13          Q.       What were the three general  
14 activities?

15          A.       Internal medicine, family  
16 medicine, consulting for companies in  
17 occupational environmental health issues.

18          Q.       As a doctor, have you treated  
19 patients for pain from cancer?

20          A.       Yes.

21          Q.       And as a doctor, have you  
22 treated patients for pain for -- or excuse  
23 me. Strike that.

24                   Have you treated patients with

1 chronic non-malignant pain as a doctor?

2 MS. CONROY: Objection.

3 Q. (BY MR. DONOHUE) Do you  
4 believe opioids are addictive?

5 A. Yes.

6 Q. When did you first learn that  
7 opioids are addictive?

8 A. I don't recall.

9 Q. Did you know --

10 A. Maybe when I read a biography  
11 of Charles Dickens. This would have been in  
12 the '70s sometime.

13 Q. Have you prescribed opioids to  
14 your patients?

15 A. Yes.

16 Q. What opioids have you  
17 prescribed to your patients?

18 A. Well, if you look, it was  
19 produced in this case. I think it's one of  
20 the exhibits.

21 Purdue got my IMS data, and two  
22 or three year -- about five years of that  
23 data is accurate. So you'd have to go -- let  
24 me get that document out and I'll tell you

1      what I prescribed.

2 MR. DONOHUE: Can you hand that  
3 to the court reporter and we'll mark  
4 that as Deposition Exhibit 3.

5 (Whereupon, Deposition Exhibit  
6 Egilman 3, IMS Data, David Egilman,  
7 was marked for identification.)

8 MS. CONROY: Do you have any  
9 copies?

10 MR. DONOHUE: Sorry, I thought  
11 I did, and I'm looking for them right  
12 now.

13 THE WITNESS: Let me just take  
14 an aside here. Do you know using this  
15 is illegal based on the contract with  
16 IMS. I just want to make that record.

17 Q. (BY MR. DONOHUE) This is a --  
18 well, let's identify a document that we've  
19 marked as Exhibit 3.

[illegible]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



[illegible]

[illegible]

[illegible]

1       prescribed opioids to any of your patients?

2               A.       I don't think so. It's  
3       possible that I supervised the prescription  
4       of opioids when I was supervising residents  
5       of family medicine. But I wouldn't have  
6       written those prescriptions, and I don't have  
7       any -- but I would have been responsible for  
8       those prescriptions. I don't have any  
9       specific recollection of that actually  
10      happening.

11             Q.       For the prescriptions that you  
12      wrote for opioids when treating your  
13      patients, did you prescribe opioids because  
14      it was medically necessary?

15             A.       Yes and no.

16             Q.       When were the times you  
17      prescribed opioids to your patients when it  
18      wasn't medically necessary?

19             A.       Do you see the OxyContin?  
20      Okay? On the second page of the exhibit?

21                     I think most of these relate to  
22      one patient, and I was -- he was addicted.  
23      And I was trying to get him off.

24                     So it was medically necessary

1       so he wouldn't go into withdrawal, but that's  
2       not a medical necessity in terms of treating  
3       the pain.

4                       And I tried to get him off, and  
5       I failed and therefore I cut him off.

6               Q.       Other than the patient that you  
7       just mentioned, are you aware of any other  
8       patients that you prescribed opioids to that  
9       became addicted?

10              A.       No.

11             Q.       Did you refer to any of your  
12       patients' files in reaching the opinions in  
13       your expert report that we're here today  
14       looking at?

15             A.       I don't have access to my  
16       patients' files.

17             Q.       So the answer is no?

18             A.       That's kind of a vague and  
19       ambiguous question, but if you're asking just  
20       whether I looked in the file, the answer is  
21       no.

22                    If you're asking whether I  
23       relied on information that I gathered while I  
24       was treating patients, the answer is yes.

1 But I didn't look at the file.

2 Q. Do you believe chronic pain is  
3 a serious medical condition?

4 MS. CONROY: Objection.

5 THE WITNESS: May or may not  
6 be.

7 Q. (BY MR. DONOHUE) Sometimes it  
8 is?

9 A. Sometimes it is.

10 Q. How do you --

11 A. Well, sometimes chronic pain is  
12 a symptom of a serious medical condition.  
13 And probably, rarely, chronic pain is --  
14 well, no. It's -- it's not in and of  
15 itself -- it always comes from something.  
16 Okay? So the something that causes the  
17 chronic pain can be a serious medical  
18 condition. Part of the seriousness of the  
19 medical condition is the fact that the person  
20 is in pain.

21 Q. Do you believe that chronic  
22 pain affects people that are in Summit  
23 County, Ohio?

24 A. I'm sure they -- I'm sure there

1 are people in pain in Summit County, Ohio.

2 Q. What about Cuyahoga County,  
3 Ohio? Do you believe there are people that  
4 are in chronic pain living there?

5 A. I'm sure there are.

6 Q. What about in the  
7 United States? What would you estimate is  
8 the number of people in the United States  
9 that are affected with chronic pain?

10 A. I don't think there are good  
11 estimates of that number. I don't know.

12 Q. Would it be millions of people?

13 A. I don't think so.

14 Q. Less than a million?

15 A. I don't have a number. There's  
16 no good studies.

17 Q. Do you believe there are any  
18 risks, medical risks associated with  
19 untreated chronic pain?

20 MS. CONROY: Objection.

21 THE WITNESS: There are medical  
22 risks of not treating the disease  
23 that's causing chronic pain.

24 Q. (BY MR. DONOHUE) When you

1       treat patients as a medical doctor, do you  
2       treat the patients individually?

3             A.       Not always.

4             Q.       What's an example of when you  
5       don't treat a patient as an individual?

6             A.       I might treat a family, or a  
7       parent and a child. They might have --  
8       particularly with respect to children.  
9       There's always someone else who I'm dealing  
10      with.

11                 In some cases there are issues  
12      that I'm treating that relate to the  
13      interaction of both parties, both a child and  
14      a parent or the parents.

15             Q.       Do you believe there's a single  
16      treatment option that would be appropriate  
17      for every patient that was suffering from  
18      chronic pain?

19             A.       No.

20             Q.       When you treat patients, do you  
21      believe it's important to have a variety of  
22      treatment options to choose from?

23             A.       Yes and no.

24             Q.       What's the no part?



1           A.       Well, if you come in with a cut  
2     finger, I don't need five different ways to  
3     fix that cut finger.

4                   Pretty much there's one way to  
5     fix that cut finger, depending on how long  
6     the cut or how deep it is. If it's big  
7     enough, it's going to need to be sutured.  
8     There's going to be no other alternative. It  
9     doesn't help -- there are no other  
10    alternatives.

11                  If you come in with an  
12    infection and I have an antibiotic that works  
13    on that infection, I don't need other  
14    options. I just need the one antibiotic.

15                  So those are examples of where  
16    I don't need a lot of options.

17           Q.       Could you turn to page 37 of  
18    your report, please?

19                  Actually, I apologize.  
20    Page 36. So at the end of your background  
21    and qualifications which runs from page 29 to  
22    page 36 of your report, you write that you've  
23    reached the conclusions stated below to a  
24    reasonable degree of medical probability

1       based on your review of the medical and  
2       scientific literature, corporate documents,  
3       deposition, and on your years of training and  
4       clinical experience. Do you see that?

5               A.       Yes.

6               Q.       When you are referencing the  
7       conclusions stated below, are you referencing  
8       the opinions that you give in the remainder  
9       of the report?

10              A.       Yes.

11                      Reference -- yeah, I'm  
12       referencing everything in the report.

13              Q.       Now, with respect to the  
14       methodology which starts on page 37 of your  
15       report, you write that you base your opinions  
16       on the following sources of information.

17                      So I want to ask you a couple  
18       of questions about that, if that's all right.

19                      Review of medical literature.  
20       Did you review medical literature in support  
21       of your opinions?

22              A.       No.

23              Q.       You did not?

24              A.       I did not do what you just

1 asked.

2 Q. Okay. Let me back up, then.

3 A. Alone. Okay? It's a -- okay?

4 I did not do what you just asked.

5 Q. Are you basing your opinions on  
6 your report on a review of medical  
7 literature?

8 A. Yes.

9 Q. And did you review any medical  
10 literature?

11 A. Yes.

12 Q. And did you review medical  
13 journals?

14 A. Yes.

15 Q. Did you --

16 A. I didn't review journals. I  
17 reviewed journal articles. Articles that  
18 appeared in journals.

19 Q. Is there anywhere in your  
20 report that lists out the medical journal  
21 articles that you reviewed that are the bases  
22 of your opinions?

23 A. Well, there's two places there.  
24 You have a long list of all of the articles

1       that I searched over.

2               Q.       Okay.

3               A.       And then at the -- in some of  
4       the opinions I cite specific medical  
5       literature.

6                       So it appears in aggregate and  
7       then attached to some specific opinions.

8               Q.       Did you select all of the  
9       medical journal articles that you reviewed  
10      that form the basis of your opinion?

11              A.       Yes.

12              Q.       And if we -- let me just go  
13      through this and ask these questions.

14                      When you write "Review of  
15      medical literature," and then underneath it  
16      says "Medical meetings," what does that refer  
17      to?

18              A.       Well, you know how impact and  
19      action have meetings? So I got the minutes  
20      of those meetings and I reviewed those. FDA  
21      meetings. I reviewed those.

22                      There are some memos, corporate  
23      memos of meetings. So that kind of business.

24              Q.       And if you took the first

1       bullet point, which is your review of medical  
2       literature, how many hours would you estimate  
3       that you spent reviewing medical literature?

4               A.       No idea.

5               Q.       Can you estimate for us?

6               A.       No.

7               Q.       Well, you spent 384 hours total  
8       in the four months that you've been on this  
9       engagement; right?

10              A.       Yeah, this isn't limited to the  
11       four months I've been involved in this  
12       engagement.

13              Q.       What is it comprised of?

14              A.       It's limited to my entire life  
15       starting in 1973, probably. So I've been  
16       reviewing this kind of work since 1973.

17                      So, you know, it's not -- I  
18       didn't start looking at this like last month,  
19       November.

20              Q.       So if I wanted to know --

21              A.       I mean, for example, you know  
22       that I gave a report, including some of the  
23       documents, in 2004 and '5, all of the things  
24       in that time frame as well. Related to the

1       secret documents.

2               Q.       If we wanted to know what  
3       medical literature specifically you based  
4       your opinions on since you have been engaged,  
5       would you be able to answer that?

6               A.       Anything dated since November,  
7       I -- is something that I read since I've been  
8       engaged.

9               Q.       And are you able to estimate  
10       how many hours in the last four months that  
11       you have reviewed medical literature?

12              A.       No.

13              Q.       How about review of published  
14       books? Are you able to estimate how many  
15       hours in the last four months you've reviewed  
16       published books?

17              A.       No.

18              Q.       How about review of corporate  
19       documents? Do you have a list of the  
20       productions that you reviewed? Did you  
21       personally review documents from those  
22       productions?

23              A.       Yes.

24              Q.       And how many hours in the last

1 four months have you spent reviewing  
2 corporate documents?

3 A. I do not know.

4 Q. Do you have any guess?

5 A. Less than 384.

6 Q. And if you'd turn to page 38,  
7 you have a category "Review of other produced  
8 documents."

9 Do you see that?

10 A. I do.

11 Q. Can you estimate how many hours  
12 in the last four months you've reviewed other  
13 produced documents?

14 A. No.

15 Q. And then you have a review of  
16 depositions. Do you see that?

17 A. I do.

18 Q. Can you estimate how many hours  
19 in the last four months you've spent  
20 reviewing depositions?

21 A. No.

22 Q. With respect to your staff, do  
23 you know how many hours any member of your  
24 staff would have spent on any of the

1 materials reviewed that we just went through?

2 A. No.

3 Q. And what about the students?

4 Would you have any idea of the number of  
5 hours the students that are working with you  
6 have reviewed on any of the materials we've  
7 gone through?

8 A. No.

9 Q. As part of your engagement in  
10 this litigation, have you conducted  
11 interviews of witnesses?

12 A. No.

13 Q. As part of your engagement,  
14 have you discussed the litigation with any  
15 other experts?

16 A. This litigation?

17 Q. Yes.

18 A. No.

19 Q. As part of this litigation and  
20 your engagement, have you reviewed any  
21 individual patient's information?

22 A. Yes.

23 Q. What individual patient  
24 information have you reviewed as part of your



1 engagement?

2 A. Well, if you'll look at the --  
3 there's a Butrans ad which involves -- which  
4 describes patients. There's other  
5 advertisements and medical information on --  
6 in other documents and published papers that  
7 relate to individual patient information.

8 There's the Purdue marketing  
9 advertisements, and the counter  
10 advertisements where patients express their  
11 experience using OxyContin initially and then  
12 after they became addicted. So I reviewed  
13 those.

14 There's other patient  
15 information involved, I think, in some of the  
16 call notes. For example, there's call  
17 notes -- oh, there's the death notice of the  
18 woman who took half of OxyContin and died of  
19 an overdose.

20 So that's a medical report to  
21 the FDA by Purdue that includes patient  
22 information.

23 So throughout the documents,  
24 there's a lot of information about patient

1 histories.

2 Q. Do you know the volume of  
3 medical literature that you considered, read,  
4 or reviewed in rendering your opinions in  
5 this engagement?

6 A. By search I think it's about  
7 35,000 articles that I produced to you. So I  
8 searched over them, for example, for any  
9 documents that related to studies of the  
10 efficacy of narcotics, opioids for pain, and  
11 a variety of other topics. So I searched  
12 over all of those for most of the things I  
13 gave opinions on. And then the ones that  
14 came out, I read the abstracts. If I thought  
15 they were relevant, they got into the  
16 article.

17 Q. And how did you conduct the  
18 search through the medical literature? Is  
19 that through a database?

20 A. PubMed.

21 Q. PubMed?

22 A. PubMed.

23 Q. And do you have any idea of the  
24 volume of documents that you've considered as

1 part of this engagement?

2 A. Well, it's 90 million documents  
3 of database. I did similar searches over the  
4 database. And then there's the 35,000  
5 articles in PubMed, and then there's  
6 additional documents that I reviewed  
7 available. Some web documents. Some --  
8 there were other documents I think that were  
9 produced in the litigation: the FDA  
10 meetings, the two reports on the FDA,  
11 government -- GAO report on the FDA. And  
12 there was another report on the FDA that I  
13 read. So there are other documents I read in  
14 addition to the database in the medical  
15 literature.

16 And of course we did a -- we  
17 did a deep dive for that -- for that poster  
18 presentation. Trying to find all those  
19 citations because they weren't PubMed, and  
20 they -- we went to -- we went to like several  
21 different libraries to do that -- to do the  
22 dive for the Fishbain missing materials.

23 MR. DONOHUE: I think now would  
24 be a good time to take a lunch break,

1           if that's all right.

2                   MS. CONROY:   Sure.

3                   THE VIDEOGRAPHER:   Off the  
4           record at 12:24.

5                   (Recess taken, 12:23 p.m. to  
6           1:15 p.m.)

7                   THE VIDEOGRAPHER:   We are back  
8           on the record at 1:16.

9                   THE WITNESS:   Okay.   I just  
10          wanted to let you know that exhibit --  
11          well, it's not an exhibit, but  
12          folder 20 here was additional bases  
13          for opinion that I forgot to mention.

14                               EXAMINATION

15   BY MS. SAULINO:

16               Q.       Okay.   Thank you, Dr. Egilman.

17                       So as you may have heard  
18   earlier, my name is Jennifer Saulino.   I'm  
19   with a law firm called Covington & Burling,  
20   and I represent McKesson in this litigation.

21                       So you are just pointing to a  
22   folder that you have numbered as 20 that's in  
23   front of you, and you're saying now that that  
24   is additional bases for the opinions that you

1 issued signed March 25th, 2019; is that  
2 right?

3 A. Yes. That was a -- what I did  
4 was I added -- I had already given additional  
5 bases before. I omitted this. I added this  
6 to the additional bases.

7 Q. And when did you determine that  
8 these additional bases existed?

9 A. Sometime between when my report  
10 was written and today.

11 Q. And you didn't feel the need to  
12 disclose them to the defendants until this  
13 moment?

14 A. Correct.

15 Q. Okay. Let's mark folder 20, as  
16 Exhibit --

17 Can I have that, please?

18 Thank you.

19 (Whereupon, Deposition Exhibit  
20 Egilman 4, Green folder marked 20 -  
21 Distribute = Manufacturers, was marked  
22 for identification.)

23 Q. (BY MS. SAULINO) So we've  
24 identified folder number 20 that was just

1 identified by Dr. Egilman as Exhibit 4 to  
2 this deposition.

3 That's all we have for that  
4 right now, Dr. Egilman.

5 Dr. Egilman, in your report you  
6 detailed two methods that you used to form  
7 opinions in this case, the grounded theory  
8 approach and the evidence-based method. Is  
9 that right?

10 A. Can you tell me where you are  
11 in the report.

12 Q. Sir, you wrote the report. You  
13 know what methodology you relied upon?

14 A. Yes. Can you tell me where in  
15 the report you're reading from?

16 Q. Sir, do you recall relying on  
17 the grounded theory approach and the  
18 evidence-based method?

19 A. Yes.

20 Q. And those are the two  
21 methodologies that you detailed in your  
22 report. Correct?

23 A. General methodologies for the  
24 report, yes.

1           Q.       And those are the only  
2 methodologies that you set forth in your  
3 report; correct?

4                   MS. CONROY:  Objection.

5                   THE WITNESS:  No, that's not  
6 correct.

7           Q.       (BY MS. SAULINO)  You don't  
8 provide any other detail of any methodology  
9 anywhere in your report, do you?

10          A.       I don't think that's correct.

11          Q.       Where do you believe that you  
12 provide methodology?

13          A.       This whole discussion of EERW  
14 methodology, for example.

15                   There's other comments on, for  
16 example, the quality of the estimates of the  
17 number of pain patients.  There are a variety  
18 of other report -- other opinions that  
19 include the methodologic discussions.

20          Q.       Okay.  Doctor Egilman, you  
21 wrote this report; right?

22          A.       Yes.

23          Q.       Did you write it yourself?

24          A.       Yes.

1           Q.       And did the plaintiffs' lawyers  
2       help you write it?

3           A.       No.

4           Q.       Not at all?

5           A.       No.

6           Q.       And when you wrote this report,  
7       you chose, on pages -- starting at about  
8       38 -- do you have your report in front of  
9       you?

10          A.       I do. I'm on page 38.

11          Q.       Okay. It looks like I might be  
12       off by a page. 37.

13                    You start with a section called  
14       "Methodology." Am I reading that correctly?

15          A.       Correct.

16          Q.       Okay. And under your section  
17       called "Methodology," you start with the  
18       grounded theory approach; right? Which is --  
19       which starts on page 38.

20                    Under "State of the art  
21       methods"?

22          A.       Correct.

23          Q.       Okay. And then, if you go to  
24       page 40, you explain evidence-based method --



1 evidence-based medicine methods; right?

2 A. Yes.

3 Q. Okay. In your methodology  
4 section, you do not detail any other  
5 methodologies, do you?

6 A. That's correct.

7 Q. Okay. So your methodology  
8 section of your report is incomplete?

9 A. No.

10 Q. So you only rely, then, on two  
11 methodologies in your report?

12 A. No.

13 MS. CONROY: Objection.

14 Q. (BY MS. SAULINO) So your  
15 methodology section is inaccurate?

16 A. No.

17 Q. So where else did you detail  
18 your methodologies, Dr. Egilman?

19 A. Well, I just gave you several  
20 other examples.

21 Q. And why do you not detail them  
22 in the methodology section of your report,  
23 sir?

24 A. Excuse me. Your question was

1       where else do you --

2               Q.       Sir, are you reading the  
3       transcript of your own deposition right now?

4               A.       I'm reading your question.

5               Q.       Okay, sir. I can ask my  
6       question again. I'll just make it clear.

7               A.       I think you cut my answer off.  
8       That's my problem.

9               Q.       Sir, I'll withdraw the question  
10      that I asked and I'll ask a new one. Okay?

11              A.       That was my problem, is that  
12      you cut my answer off.

13              Q.       I'll withdraw it and ask a new  
14      one, then.

15              A.       Great.

16              Q.       Great. So in Section 3 of your  
17      report that you title "Methodology," you and  
18      I have already agreed that you only detailed  
19      two methodologies there; correct?

20              A.       In that section that outlines  
21      the general methodology for the report,  
22      correct.

23              Q.       Okay. And the other  
24      methodologies that you now say you also

1       relied on, you did not detail in the  
2       methodology section of your report, did you?

3               A.       That's correct. The specific  
4       criticism of some of the epidemiologic  
5       studies, approaches and other things were not  
6       in the methodology section per se, although  
7       they are encompassed by evidence-based  
8       medicine methods.

9               Q.       You don't explain that in the  
10      methodology section of your report, do you?

11              A.       I'm not sure that's correct.

12              Q.       You don't explain that you're  
13      adding other methodologies to your report in  
14      the evidence-based medicine methods section  
15      of your report, do you?

16              A.       No. Let me try to help you  
17      here.

18                      I think in evidence-based  
19      medicine, part of this report, the citations  
20      certainly, include epidemiology and  
21      epidemiologic methods.

22                      So some of the opinions later  
23      on in the report include more detailed  
24      discussion, particular epidemiological

1       methodological issues which are encompassed  
2       as part of evidence-based medicine.

3               Q.       So the overall methodology,  
4       though, that you were using for those  
5       opinions is evidence-based medicine method;  
6       correct?

7               A.       Correct. Which is --  
8       encompasses many subfields.

9               Q.       And what you're referring to as  
10       appearing, quote, later in your report are  
11       simply opinions; right?

12              A.       No, they're bases for opinions,  
13       when I talk about -- if you're talking about  
14       methods.

15              Q.       And you don't have anywhere  
16       else in your report where you lay out, "This  
17       is the methodology that I used in order to  
18       reach this opinion," do you?

19              A.       I don't think I used that form,  
20       but that's there in the substance.

21              Q.       Okay. Well, we'll look at some  
22       of that.

23                      Now, you have not documented in  
24       your report which opinion of your 490

1       opinions is based on which of the  
2       methodologies you lay out here, have you?

3           A.       Not directly by reference,  
4       correct.

5           Q.       There is no way to know, from  
6       looking at your report, which opinion is  
7       based on which method; correct?

8           A.       No.

9           Q.       Where have you listed that,  
10      sir?

11          A.       Well, in some cases if I'm  
12      discussing epidemiologic methodological  
13      issue, that would come under evidence-based  
14      medicine methods.

15          Q.       You don't say --

16          A.       That --

17          Q.       Go ahead, sir.

18          A.       In other parts of the report  
19      where I'm not dealing with a scientific issue  
20      but rather with an analysis of the ways  
21      companies influenced physicians, I'm using  
22      grounded methods in general.

23          Q.       Okay.

24          A.       In other words, when I discuss

1 minutes, memos, depositions, and review  
2 documents related to the corporate conduct,  
3 that would be under the general category of  
4 grounds or methodology.

5 Q. What you just described is not  
6 written anywhere in your report, is it?

7 A. Well, no, that's not correct.

8 Q. Sir, nowhere in your report do  
9 you say this opinion is based on grounded  
10 theory approach, or this opinion is based on  
11 evidence-based medicine methodology; correct?

12 A. By opinion, do you mean?

13 Q. Correct.

14 A. That's correct. I do not refer  
15 back to a particular -- to grounded theory  
16 when I use grounded theory in the report,  
17 that's correct.

18 Q. So there's no way for anyone  
19 other than you to look at your report and  
20 know which methodology you used for each  
21 opinion; correct?

22 A. Wrong.

23 Q. Where in your report have you  
24 provided those bases?

1           A.       Well, the bases for grounded  
2       theory method is on page 38 and 39.

3           Q.       Sir, let me clarify my  
4       question.

5           A.       And in --

6           Q.       Let me clarify my question. I  
7       obviously was unclear.

8                   MS. CONROY: Let the witness  
9       finish the answer before you start  
10      another question.

11                  MR. DONOHUE: Then I will  
12      withdraw the question and clarify it.

13                  MS. CONROY: And withdraw it by  
14      not interrupting the witness.

15           Q.       (BY MS. SAULINO) Sir, you just  
16      answered in response to my question that  
17      nowhere in your report do you -- is there any  
18      way to know which opinion is based on which  
19      method. You said no. Correct?

20           A.       I don't think that's correct.

21           Q.       Okay.

22           A.       Certainly -- I don't know  
23      which -- you asked about eight related  
24      questions. The previous question was not the

1 question that you just asked. You withdrew  
2 the previous question, and the question --  
3 two above that -- I can't see. I don't think  
4 it's the question that would relate to the  
5 question you just asked.

6 Q. If another expert were to take  
7 your report and pick it up, they cannot, by  
8 reading your report, know which methodology  
9 you used for each opinion; correct?

10 A. No.

11 Q. That's not correct?

12 A. That is not correct.

13 Q. Why do you say that's not  
14 correct?

15 A. Because anybody familiar with  
16 grounded theory methods -- and I give you  
17 some examples of papers -- could recognize  
18 the --

19 Let me give you -- try to give  
20 you an example.

21 Q. Sir, I don't want an example.  
22 I just want an answer to my question.

23 MS. CONROY: Let the witness  
24 answer the question.



1 MS. SAULINO: I am asking for  
2 an answer to my question. I don't  
3 want an example, just an answer to my  
4 question.

5 THE WITNESS: Okay. That's too  
6 bad. I'm going to give you an  
7 example.

8 MS. SAULINO: Sir, I will  
9 object to you -- I will object to the  
10 discourse here. You can provide that  
11 information on your own counsel's  
12 time. I would like an answer to my  
13 question.

14 THE WITNESS: I'm giving you an  
15 answer to your question.

16 SPECIAL MASTER COHEN: Why  
17 don't you reread the question to the  
18 witness and see if he can answer it at  
19 least first without an example.

20 Q. (BY MS. SAULINO) Sir, I asked  
21 you if another expert were to take your  
22 report and pick it up, they cannot, by  
23 reading your report, know which methodology  
24 you used for each opinion, correct?

1                               And you said no.

2                               And I asked you, why do you say  
3       that's not correct?

4                   A.        I say that's not correct  
5       because an expert who is familiar with  
6       grounded methods will recognize which  
7       opinions in this report were based in  
8       grounded methods rather than something else.  
9       Like math.

10                Q.        So, sir, what you're saying is  
11       that if there is an opinion in this report  
12       that's based on math, then it's not based on  
13       the grounded theory approach?

14                A.        That was exactly the example I  
15       was going to give, yes.

16                Q.        And, sir, nowhere in your  
17       report do you lay out which opinion uses  
18       which method, do you?

19                A.        Not explicitly.

20                Q.        Now, I want to start with the  
21       evidence-based medicine method. I'd like to  
22       ask you some questions about your  
23       methodology; okay?

24                            You say that the first step in

1 the evidence-based medicine method is the  
2 development of answerable questions; right?

3 A. Yes.

4 Q. And you developed two such  
5 questions; right?

6 A. I'm not sure what you're  
7 referring to.

8 Q. I'm referring to the answerable  
9 questions that you developed in your report.

10 A. Yes.

11 Q. The top of page 41?

12 A. Right.

13 Q. "What are the treatment options  
14 for chronic non-cancer pain?" Is your first.  
15 And your second is "In patients with chronic  
16 non-cancer pain, how do opioids and NSAIDs  
17 compare in terms of efficacy and adverse  
18 effects?"

19 I read those correctly; right?

20 A. Yeah, but you took them out of  
21 context. You took that -- that question is  
22 out of context.

23 Q. Sir, I read those directly from  
24 your report, didn't I?

1           A.       You read them directly from the  
2       report, but your initial framing was  
3       incorrect.

4           Q.       Well, sir, I'm looking at the  
5       section, if you start on page 40, that is  
6       titled "Step 1, translation of uncertainty  
7       into" answerable -- into "an answerable  
8       question."   Right?

9           A.       Yes.

10          Q.       Okay.   And then you go through  
11       your explanation of what generally answerable  
12       questions are, and then you say, "I asked the  
13       following background questions."   And you  
14       list one question.   "What are the treatment  
15       options for chronic non-cancer pain"; right?

16          A.       Right.

17          Q.       And you say, "I asked the  
18       following foreground questions," and you list  
19       one question, and it is, "In patients with  
20       chronic non-cancer pain, how do opioids and  
21       NSAIDs compare in terms of efficacy and  
22       adverse effects?"   Right?

23          A.       Yes.

24          Q.       That's an accurate reading of

1       your report; right?

2               A.       Of that section of the report.

3               Q.       Okay. So those are the two  
4       answerable questions that you developed for  
5       your report.

6               A.       No.

7               Q.       You developed additional  
8       answerable questions that you didn't list in  
9       your report?

10               MS. CONROY: Objection.

11               THE WITNESS: I had an  
12       assignment which I gave you, and that  
13       was the -- that was the answerable  
14       question that I was addressing in the  
15       report.

16               These two questions, as you can  
17       see by the framing that I put on them,  
18       are background questions.

19               Q.       (BY MS. SAULINO) So your  
20       answerable question was not developed by you.  
21       It was an assignment given to you by  
22       plaintiff lawyers?

23               A.       Well, it was jointly discussed  
24       and developed by me and them together, yes.

1           Q.       As you explain the  
2       evidence-based medicine method, you say that  
3       it is an evidence that is an approach --

4           A.       Can you tell me where you're  
5       reading from so I can follow?

6           Q.       I'm reading your words, sir.

7           A.       I know. But --

8           Q.       Page 40 at the top.

9                    "It is an approach to medical  
10       decision-making meant to integrate individual  
11       clinical expertise with the best available  
12       external clinical evidence from systematic  
13       research"; right?

14          A.       I don't think you read that  
15       correctly.

16          Q.       What do you think that I was  
17       mistaken about?

18          A.       Well, I'm looking at what she  
19       transcribed and what I'm reading and it's  
20       different.

21                   I couldn't catch up to the  
22       beginning. That's why I asked you where you  
23       were. But you kept reading and I couldn't  
24       follow the language.

1 Q. Did you hear my question, sir?

2 A. Yeah, but your question was  
3 whether you read it correctly. In order to  
4 know whether you read it correctly, I need to  
5 read it. And I need to listen to what you're  
6 saying.

7 Q. Sir, I actually didn't ask you  
8 whether I read it correctly. I just asked  
9 you whether that was the approach that you  
10 described in your report.

11 A. Well, you read it and then said  
12 that. And so in order to know whether it was  
13 correctly described, I need to read it.

14 Q. You don't remember what  
15 approach you used in your report, sir?

16 A. Generally, I do.

17 MS. CONROY: Objection.

18 THE WITNESS: But you're asking  
19 a specific quote, or attempting to  
20 quote it. I don't know if you're  
21 correctly quoting or not. And I need  
22 to read it to see if you're correctly  
23 quoting.

24 This is serious business.

1           Q.       (BY MS. SAULINO) Yes, it is,  
2       sir, and I'm trying to --

3           A.       If you leave a word out or  
4       something and I miss it, that's bad. I  
5       want -- so I want to read it.

6           Q.       Right. Because if I left a  
7       word out, then it might be that someone  
8       reading it later on wouldn't be able to  
9       understand the full basis of your opinions;  
10      right?

11          A.       Anything's possible, but, for  
12      example, when you left the framing of the  
13      background questions out of what you did  
14      before, that was completely misleading.

15                    So you might leave a word out,  
16      it might not make a difference. I don't  
17      know. But I'd rather not take a chance.

18          Q.       Sir --

19          A.       That's why if you're going to  
20      read something, I'd like to know where you're  
21      reading so I can follow it.

22          Q.       Sir, it sounds like you would  
23      agree with me that it's very important that  
24      we be able to look at your report, read it,



1 understand the bases for your opinions and  
2 methodology, and then replicate it; right?  
3 That's what any good expert would do.

4 MS. CONROY: Objection.

5 THE WITNESS: Okay. Well,  
6 there's two questions there. Which do  
7 you want me to answer?

8 Q. (BY MS. SAULINO) Why don't you  
9 pick, sir?

10 A. I don't know.

11 Q. Sir, according to you,  
12 "Evidence-Based Medicine" -- I'm at the top  
13 of page 40 again -- "is an approach to  
14 medical decision-making meant to integrate  
15 individual clinical expertise with the best  
16 available external clinical evidence from  
17 systematic research"; right?

18 A. Correct. With quotes between  
19 individual and research -- I think it's a  
20 David Sackett quote.

21 Q. Are you agreeing with  
22 Mr. Sackett, Dr. Sackett?

23 A. I am.

24 Q. Okay.

1                   And the practice of  
2       evidence-based medicine can be outlined in  
3       five basic steps; right?

4           A.       Yes.

5           Q.       The translation of uncertainty  
6       to an answerable question is the first step;  
7       right?

8           A.       That's the one he numbered  
9       number one.

10          Q.       Okay. And that is one of the  
11       steps that should be done by the clinical  
12       expert; right?

13                   MS. CONROY: Objection.

14                   THE WITNESS: If possible.

15                   It's not always possible.

16          Q.       (BY MS. SAULINO) Are you  
17       saying that was not possible in this case?

18          A.       No. I'm saying it's not always  
19       possible. You asked a general question, you  
20       get a general answer.

21          Q.       Okay. And it was possible in  
22       this case for you, as the clinical expert, to  
23       translate uncertainty to an answerable  
24       question. Right?

1           A.       To the extent that there was  
2       uncertainty, yes.

3           Q.       Okay. But you didn't do that  
4       yourself. The plaintiffs' lawyers handled  
5       that for you; right?

6           A.       No.

7           Q.       Well, I'm basing this on your  
8       testimony just a couple of minutes ago. You  
9       told me that your answerable question here  
10      was the assignment you were given by  
11      plaintiffs' lawyers; right?

12          A.       No.

13                   MS. CONROY: Objection.

14                   THE WITNESS: I said it was an  
15      assignment that we discussed and  
16      talked about and agreed to together.

17          Q.       (BY MS. SAULINO) When was that,  
18      sir?

19          A.       That was discussed three months  
20      ago.

21          Q.       You don't remember when?

22          A.       No.

23          Q.       Okay. So it wasn't an  
24      assignment; it was an agreed-to research?

1           A.       The same difference, to me.

2           Q.       Okay. And that was the only  
3 question that you were trying to answer here?

4           A.       That was the only question I  
5 was asked to answer here. There may have  
6 been other questions that came up that were  
7 also answered.

8           Q.       Okay. And precisely what was  
9 that question, just so we have it here in  
10 your methodology?

11          A.       I was asked to determine within  
12 a reasonable degree of medical and scientific  
13 certainty whether or not various defendants  
14 working together and/or separately were  
15 significant factors in causing the opioid  
16 epidemic.

17          Q.       Okay. Let's mark that as an  
18 exhibit.

19                   (Whereupon, Deposition Exhibit  
20 Egilman 5, My Assignment, was marked  
21 for identification.)

22          Q.       (BY MS. SAULINO) And again,  
23 the way that you just stated that, it says,  
24 "I was asked"; right?

1           A.       That's correct.

2           Q.       Okay. So we've marked as  
3       Exhibit 5, what you've titled "My  
4       Assignment," which you just read into the  
5       record.

6                   And just so we're clear, you  
7       didn't record that question in your report;  
8       right?

9           A.       That's correct.

10          Q.       Why did you not put that in  
11       your report?

12          A.       No reason --

13          Q.       You didn't --

14          A.       -- in particular.

15          Q.       You didn't think it was  
16       important to put down the answerable question  
17       that was step 1 in your evidence-based  
18       medicine method?

19          A.       That's correct.

20          Q.       And then you added your  
21       background and foreground question; correct?

22          A.       Correct.

23          Q.       Your background question is  
24       "What are the treatment options for chronic

1 non-cancer pain?" Right?

2 A. Correct.

3 Q. Your foreground question is "In  
4 patients with chronic non-cancer pain, how do  
5 opioids and NSAIDs compare in terms of  
6 efficacy and adverse effect?" Right?

7 A. Correct.

8 Q. Neither of those answers the  
9 question whether or not various defendants  
10 working together or separately were  
11 significant factors in causing the opioid  
12 epidemic; correct?

13 A. Not by themselves, but they are  
14 a part of the answer.

15 MS. CONROY: Objection.

16 Q. (BY MS. SAULINO) You don't list  
17 any other background or foreground questions  
18 that you were exploring; correct?

19 A. That's correct.

20 Q. So there's no way for us to  
21 know what those were?

22 A. Correct.

23 Q. Now, your next step is  
24 systematic retrieval of best evidence

1       available; right?

2               A.       Correct.

3               Q.       You say, "Once an answerable  
4       question has been posed, the researcher must  
5       select an evidence resource, execute a search  
6       strategy, and then evaluate the evidence  
7       summary"; right?

8               A.       Correct.

9               Q.       And you say your evidence  
10      resource included medical literature and  
11      company documents; right?

12              A.       And depositions.

13              Q.       Okay.

14                      And you --

15              A.       And other documents. I think I  
16      mentioned that already. Institute of  
17      Medicine reports, FDA reports, GAO reports.  
18      Those are all probably incorporated into  
19      company documents as well.

20              Q.       I'm looking at step 2 that  
21      you've listed in your report.

22                      And here under "Systematic  
23      retrieval of the best evidence available,"  
24      you first list where you went to review

1 medical evidence; right?

2 You say, "I conducted computer  
3 searches of several different databases";  
4 right?

5 A. Yes.

6 Q. And then you say, "I also  
7 searched corporate records for unpublished  
8 studies"; right?

9 A. Yes.

10 Q. And then you identify some  
11 search terms that you used; right?

12 A. Yes.

13 Q. Those are the only sources that  
14 you list under step 2; right?

15 A. Correct.

16 Q. Okay. So you're now adding to  
17 the sources that you used under step 2?

18 A. I'm not sure what you mean by  
19 "adding to sources."

20 Q. Well, you said "and  
21 depositions, and other documents." Those  
22 aren't listed here in step 2; right?

23 A. No. They're listed elsewhere.  
24 Other -- as I said, all of the government



1 documents I relied on I believe were also  
2 corporate documents, but I wanted to  
3 distinguish to be clear. They weren't  
4 generated by the companies but the companies  
5 had them.

6 So that's a distinction without  
7 a difference.

8 Depositions, I didn't include  
9 them, but I think I included them in the  
10 introductory materials before this section in  
11 this report. I think they're on the first or  
12 second page.

13 Q. You did. But here, where you  
14 talked about your systematic retrieval of the  
15 best evidence available, you didn't list  
16 them, did you?

17 A. Correct. I only listed them at  
18 the beginning. It was a mistake. I should  
19 have relisted depositions here.

20 Q. Okay. And let's look at your  
21 reference to corporate records here on  
22 page 41.

23 A. Okay.

24 Q. You say, "In addition to

1 published evidence, I also searched corporate  
2 records for unpublished studies"; right?

3 A. Right.

4 Q. Not for anything else; right?

5 A. No. I searched for all kinds  
6 of other things.

7 Q. Well, you qualify it here by  
8 saying you simply searched corporate record  
9 for unpublished studies in step 2 of your  
10 evidence-based methodology, don't you?

11 A. Yeah, but if you look at the  
12 search terms, it's obvious I was searching  
13 for other things.

14 Q. Sir, there's nothing obvious  
15 about that. Those search terms could easily  
16 be found in unpublished studies, couldn't  
17 they?

18 MS. CONROY: Objection.

19 THE WITNESS: I don't think so.

20 Q. (BY MS. SAULINO) So it's your  
21 testimony --

22 A. Not all of them. I don't think  
23 so.

24 Q. So it's your testimony, sir,

1       that while you didn't say that you used more  
2       than one -- that you used corporate records  
3       for more than unpublished studies, and in  
4       fact said exactly the opposite here, we  
5       should have known based on the search terms  
6       you listed? That's your testimony?

7               A.       No. I think elsewhere in the  
8       report I explained that I reviewed all of the  
9       documents in the repository, and I said that  
10      in that section. It says, "I have accessed  
11      the entire repository documents." Okay? And  
12      so the -- the -- it says, "In addition to  
13      published literature, I also searched  
14      corporate records for unpublished studies."  
15      There's a period. And then "I also had  
16      access to the entire repository documents  
17      listed in this litigation." Another period.

18               So the rest of that paragraph  
19      or bullet points in the bullet points of 42,  
20      are the other topics for which I searched the  
21      entire database.

22               Q.       Sir, with respect --

23               A.       Not respective of whether or  
24      not they were an unpublished study.

1           Q.       Sir, with respect, that's not  
2       what that paragraph says, is it?

3           A.       Well, with respect, it is what  
4       it says.

5           Q.       Sir, you say you "searched  
6       corporate records for unpublished studies."  
7       You then list the corporate records that you  
8       searched, and you list the search terms that  
9       you used in order to find unpublished  
10      studies. That is what you say in your  
11      report; right?

12                   MS. CONROY: Objection.

13                   THE WITNESS: No. The second  
14      sentence says, "I have had access to  
15      the entire repository of documents  
16      produced in the litigation," and it  
17      goes through what documents -- who  
18      provided those documents, and then it  
19      also has another sentence, okay?  
20      Which includes the search terms,  
21      without reference or limitation, to  
22      published studies. Unpublished  
23      studies.

24           Q.       (BY MS. SAULINO) You'd agree

1 with me all of that is qualified by the  
2 paragraph that you start with that  
3 specifically identifies unpublished studies  
4 as what you were looking for?

5 A. I do not agree with you,  
6 because that is a second -- a different  
7 sentence.

8 Q. Okay.

9 A. I had a "none" once and I'd  
10 have to defer to the "none" as to whether or  
11 not the sentence before the definition of  
12 search terms is an independent clause rather  
13 than the initial paragraph which is separated  
14 from that sentence by a list of companies  
15 whose documents were produced.

16 Q. Let's look at your search  
17 terms, sir.

18 You would agree with me that  
19 it's important to get key terms right,  
20 because otherwise you might miss relevant  
21 documents in your searches?

22 A. Well, if you limit it to terms,  
23 that would be true. I didn't limit it to  
24 those terms.

1           Q.       So there are other terms that  
2       you used that you did not list here in your  
3       report?

4           A.       Sure.  It's an iterative  
5       search.  I mentioned the -- when the lawyer  
6       for Insys was asking.  We did all kinds of  
7       sex terms.  And I didn't mention that in here  
8       either.  This is an iterative process.  
9       That's what grounded theory is.  You find  
10      something, then you pursue other things  
11      related to what you found.  And you do a  
12      variety of searches based on what you find in  
13      previous searches.

14          Q.       Sir, I'm looking at the  
15      evidence-based medicine methodology right  
16      now, not the grounded theory methodology.

17          A.       That's fine.  I'm just telling  
18      you what -- that that's what I did.  The  
19      grounded theory applies to how I reviewed  
20      this evidence-based medicine.  Remember,  
21      evidence-based medicine is pretty much  
22      limited to evidence, not as it's written.  So  
23      I'm adopting that method as a basis for using  
24      grounded theory method, which allows me to do

1 a broader analysis beyond the confines of  
2 published medical evidence.

3 Q. And what you just said is not  
4 written anywhere in your report, is it?

5 A. That's correct.

6 Q. So there was no way for us to  
7 know that until you just told me right now;  
8 right?

9 A. No. Not at all.

10 Q. Now, you said that -- you say  
11 in your report, "I initially searched the  
12 sources above for" --

13 A. Wait. Will you tell me where  
14 you're reading from?

15 Q. Page 42, your words, sir.

16 A. Okay. Go ahead.

17 Q. "I initially searched the  
18 sources above for key terms identified by me  
19 including," and you list them; right?

20 A. Correct.

21 Q. You identified these terms  
22 yourself?

23 A. Correct.

24 Q. No one helped you?

1           A.       Well, I discussed them all with  
2       the staff, so we had a group discussion. But  
3       I think pretty much these are mine.

4           Q.       Okay.

5                   And --

6           A.       It could be that one of my  
7       staff suggested one or another one.

8           Q.       And you just told me there are  
9       a number of other terms that you used; right?

10          A.       Sure.

11          Q.       But you don't list them here?

12          A.       Correct.

13          Q.       And you don't list them  
14       anywhere else in the report?

15          A.       That's correct.

16          Q.       And so there's no way for us to  
17       know what other search terms you used; right?

18          A.       That's correct.

19          Q.       Now, is it the case --

20          A.       I got a list of the sex terms,  
21       I think.

22          Q.       Sir, I understand that you want  
23       to talk about the sex terms, but I'd like to  
24       talk about your report.



1 MS. CONROY: Objection.

2 Q. (BY MS. SAULINO) So you list  
3 here a set of terms; right?

4 Is it fair to say that these  
5 are the first terms that you put through the  
6 database?

7 A. Yes.

8 Q. Okay. So your initial search  
9 was based on these terms; right?

10 A. Yes.

11 Q. Okay. And then from there, you  
12 added additional terms after?

13 A. Sure.

14 Q. Okay. So, isn't it true that  
15 anything that wouldn't be caught by these  
16 initial search terms, you then wouldn't have  
17 later reviewed?

18 A. No.

19 Q. So you did the initial search  
20 over again with additional terms?

21 A. You can only do an initial  
22 search once, so the answer to that is no.

23 Q. I'm asking you about your  
24 process, sir.

1                   Do you have any way to describe  
2     the process that you used with your initial  
3     search terms?

4                 A.       Sure.  You get -- you do the  
5     initial search, you read the documents.  
6     Then, for example, if you find -- let's say  
7     you find some document with Sade name on it.  
8     Okay?  So then you do a search by Sade's  
9     name, because you want to know what else Sade  
10    is involved in.

11                Or you find Katz's name.  So  
12    you put Katz name in.  What else can you find  
13    out about Katz.  Or you do a search and  
14    you'll find the word "impact."  And then you  
15    do a search by impact.

16                So you search by individual  
17    names, you search by entities, you -- you  
18    know, then you find the American Pain  
19    Foundation and the result.  And then you do a  
20    search by that.  And then if you find  
21    something in those documents, you do  
22    subsequent searches.  It's an iterative  
23    process.

24                Q.       Okay.  I understand that you're

1       saying it is an iterative process, which is  
2       the grounded theory approach; right?

3               A.       Yes.

4               Q.       And you used the grounded  
5       theory method in combination with the  
6       evidence-based medicine approach? Is that  
7       what we're now understanding?

8                       MS. CONROY: Objection.

9                       THE WITNESS: I used the  
10       evidence-based medicine approach  
11       primarily for evidence, but I  
12       incorporated aspects of the  
13       evidence-based approach in the  
14       grounded theory method. Because some  
15       of what I was doing in evidence-based  
16       medicine was looking at evidence. In  
17       order to understand some of the  
18       development of evidence, you have to  
19       use grounded theory. Particularly  
20       when you're looking at manipulation of  
21       study data, or influencing  
22       researchers, things that are not  
23       within the four corners of what  
24       Sackett and others would generally, at

1           the time frame, have considered  
2           important to evidence. But which now  
3           turns out to be a whole subfield of  
4           evidence. So you have to combine them  
5           both.

6           Q.       (BY MS. SAULINO) What you have  
7           just been referring to as evidence in your  
8           answer, you mean by that data generated from  
9           quantitative studies; right?

10          A.       In part.

11          Q.       I'm trying to understand your  
12          previous answer, sir. And you said you used  
13          the evidence-based medicine approach  
14          primarily for evidence, but then you  
15          explained that you had to incorporate the  
16          grounded theory method for things that aren't  
17          typically a part of evidence.

18                   And so I'm trying to understand  
19          what evidence is to you.

20          A.       Well, everything in my report  
21          is evidence, if you want a short answer. The  
22          bases of my opinions are evidence, that  
23          support my opinions. But in this particular  
24          case, if you want this distinction, mostly in

1       medicine, you're looking at, say, a  
2       randomized controlled trial.  Let's look at  
3       the Roth study.

4                       So you look at the Roth study.

5               Q.       Sir, I don't need an example,  
6       just an answer to the question.

7                       MS. CONROY:  Please don't  
8       interrupt the witness when he's in the  
9       middle of a --

10                      SPECIAL MASTER COHEN:  She's  
11       allowed to say that.

12                      THE WITNESS:  Okay.  Well, your  
13       question was -- and so I'm trying to  
14       understand what evidence is to you.  
15       Okay?  So --

16               Q.       (BY MS. SAULINO)  And I think  
17       you've answered that, sir.  You were about to  
18       give an example, but you had answered it;  
19       right?

20                      MS. CONROY:  Objection.

21                      THE WITNESS:  I gave an  
22       incomplete answer, but the judge has  
23       ruled so you can go on.

24                      SPECIAL MASTER COHEN:  So just

1           let me just step in there and offer an  
2           observation. This is a discovery  
3           deposition. It's not de bene esse.  
4           You're not testifying in court. If  
5           you were testifying in court, you  
6           would be allowed to give a complete  
7           answer. You would be allowed to  
8           finish your answer.

9                     But this is a discovery  
10           deposition, and they control what it  
11           is they want to discover, including,  
12           as I said earlier, a decision not to  
13           discover some things, for example, the  
14           examples you want to give to better  
15           explain your answer.

16                    That's their choice.

17                    So she is allowed to say, all I  
18           want is a "yes" or "no" answer, even  
19           if it's not really a "yes" or "no"  
20           answerable question. Okay?

21                    THE WITNESS: Well, Your Honor,  
22           if she'd asked the yes-or-no question,  
23           I would give a "yes" or "no" answer.  
24           Her question was --

1                   SPECIAL MASTER COHEN: In that  
2                   case --

3                   THE WITNESS: My interpretation  
4                   of what evidence-based evidence was.  
5                   She didn't ask a yes-or-no question.

6                   SPECIAL MASTER COHEN: I agree  
7                   with you in that case. There are  
8                   questions she has asked which are  
9                   "yes" or "no" answers.

10                  THE WITNESS: And I tried to  
11                  answer them all "yes" or "no."

12                  SPECIAL MASTER COHEN: I'm just  
13                  giving you guidance. I'm not scolding  
14                  you. I'm trying to make this go more  
15                  smoothly.

16                  THE WITNESS: I understand.

17                  SPECIAL MASTER COHEN: I will  
18                  also add that there are certain  
19                  courtesies that you can give to the  
20                  deponent, such as telling him what  
21                  page you're reading from, and perhaps  
22                  asking with less vigor some of your  
23                  questions.

24                  MS. SAULINO: Fair enough,

1                   Your Honor. Thank you.

2                   Q.           (BY MS. SAULINO) Let's move on  
3 to step 3. "Critical appraisal of evidence  
4 for quality clinical relevance and  
5 applicability." I'm on page 42 where we just  
6 were.

7                   A.           Sure.

8                   Q.           Okay. You say, "First, the  
9 researcher must consider the type of study  
10 returned." Right?

11                  A.           Yes.

12                  Q.           "And different guidelines may  
13 be used to critically appraise different  
14 types of studies"; right?

15                  A.           Yes.

16                  Q.           "I used each of these where  
17 appropriate to inform my analysis"; right?

18                  A.           Yes.

19                  Q.           And then you have following for  
20 a couple of pages a list of about 32  
21 questions; right?

22                  A.           I didn't count them, but I'll  
23 take your word for it.

24                  Q.           Okay. Now, you say, as we just



1 read, "I used each of these where appropriate  
2 to inform my analysis"; right?

3 A. Yes.

4 Q. You don't anywhere in your  
5 report provide any indication of which  
6 questions were used to inform your analysis  
7 for which opinion; right?

8 A. Not by number. That's correct.  
9 But I did refer to certain of these in  
10 certain opinions.

11 Q. So unless we see one of these  
12 questions listed as the basis for one of your  
13 opinions, there's no way for us to know which  
14 questions you used in order to form that  
15 opinion; right?

16 MS. CONROY: Objection.

17 THE WITNESS: No.

18 Q. (BY MS. SAULINO) I'm not  
19 right?

20 A. You are not correct.

21 Q. Okay. What is not correct  
22 about what I just said?

23 A. In some cases, in some  
24 opinions, I have made explicit reference to

1       some of the questions in pages 42 to 45.

2                       In other cases, if you were  
3       well-versed in epidemiology or in analysis of  
4       medical literature, you could know when I was  
5       using one of these methods, even if I didn't  
6       explicitly refer to a particular technique.

7               Q.       All right. But unless you  
8       actually list it as one of -- as a part of  
9       the bases for your opinions, there are -- I  
10      agree with you, there are some where you do  
11      list a question or some questions as part of  
12      the bases for your opinion; right? As you  
13      just said.

14                      You and I are agreeing, sir.

15               A.       I know. I'm just trying to  
16      understand. I'm trying to read the --

17                      Yes.

18               Q.       Okay.

19               A.       Yes.

20               Q.       So unless you've listed it,  
21      there's no way for us to know for sure what  
22      questions you were using for your critical  
23      appraisal of evidence for validity of  
24      clinical relevance and applicability; right?

1 MS. CONROY: Objection.

2 THE WITNESS: No.

3 Q. (BY MS. SAULINO) And you say  
4 no because if we are versed in epidemiology,  
5 we should be able to figure out precisely  
6 which questions you were using; right?

7 MS. CONROY: Objection.

8 THE WITNESS: In part. You  
9 also have an opportunity for 14 hours  
10 today and tomorrow to ask anything you  
11 want about them what relates to what.

12 Q. (BY MS. SAULINO) I see. But  
13 you didn't see that it was necessary to spell  
14 that out in your report; right?

15 A. I -- that's correct. I didn't  
16 think I needed to reference a particular  
17 question to a particular opinion.

18 Q. Now, you list more than  
19 36,000 pieces of literature in Exhibit C;  
20 right?

21 A. Yes.

22 Q. You certainly didn't go through  
23 this critical analysis for all 36,000-plus  
24 pieces of literature there, did you?

1           A.       That's correct.

2           Q.       There is no way for us to know  
3       which pieces of literature of those 36,000  
4       you did use the critical analysis for; right?

5           A.       Not by reading the report,  
6       that's correct.

7           Q.       So if an expert, for instance,  
8       for the defendants, wanted to take your  
9       report and replicate your work in that  
10      regard, there's no way to do that; right?

11                   MS. CONROY: Objection.

12                   THE WITNESS: No.

13           Q.       (BY MS. SAULINO) Not based on  
14      your report, is there?

15           A.       Sure there is. They could go  
16      through the literature and see if I missed  
17      something as a basis of an opinion for --

18                   I mean, most of that literature  
19      I was looking at, these questions related to  
20      whether or not opioids were effective for  
21      chronic pain. That was a big issue.

22                   And the big issues would be  
23      easy to check. We just searched that  
24      database for chronic non-malignant pain

1       opioids, you won't find much in those  
2       searches.  Somebody could do that search and  
3       see if I missed it.  That's one example.

4               Q.       Sir, the searching the database  
5       for chronic -- I'm sorry, what was --

6               A.       Chronic non-malignant pain.

7               Q.       Non-malignant pain and opioids  
8       is not one of the questions that's listed  
9       here that you used where appropriate for your  
10      critical appraisal; right?

11              A.       That specific question is not  
12      there, but it's in the opinions.

13              Q.       Okay.  So you used additional  
14      questions to make your critical appraisal?

15              A.       Sure.  Those are just the  
16      background questions.

17              Q.       I see.  But you would agree  
18      with me that on page 42, under step 3 --

19              A.       Right.

20              Q.       -- you say, "I used each of  
21      these where appropriate to inform my  
22      analysis," and then you follow that with  
23      several pages of questions; right?

24              A.       Are we on the -- you're at

1 page 42?

2 Q. Mm-hmm.

3 A. 333.1?

4 Q. I was reading the sentence that  
5 just precedes 333.1.

6 A. Right.

7 Q. Okay. So when you -- when you  
8 indicated here in your report, "I used each  
9 of these where appropriate to inform my  
10 analysis" and followed that with several  
11 pages of the types of questions that you used  
12 where appropriate, you didn't think it was  
13 necessary -- it was important to put in all  
14 of the questions that you were using?

15 A. Correct.

16 Q. And nowhere is that written  
17 down? All the questions that you were using?

18 A. Correct.

19 Q. Okay.

20 Now, the searches that you ran  
21 on the 36,292 pieces of medical literature  
22 that you list on Exhibit C, did you run those  
23 searches yourself?

24 A. Yes.

1 Q. All of them?

2 A. Yes.

3 Q. So you didn't rely on your  
4 students or staff for those searches?

5 A. No, they checked some of it.

6 Q. And once the results were  
7 returned, you reviewed the abstracts, study  
8 descriptions or results to determine whether  
9 each study addressed your questions; right?

10 A. Correct.

11 Q. And you did that with respect  
12 to everything that was returned by your  
13 search terms?

14 A. Correct.

15 Q. Do you know how many pieces of  
16 medical literature were returned by your  
17 search terms?

18 A. No.

19 Q. But you do know that you  
20 reviewed them all yourself?

21 A. I did iterative searches after  
22 the initial search.

23 Q. Again, which you don't document  
24 in your report; right?

1           A.       Correct.

2           Q.       Now, earlier you said that  
3       you've spent 384 hours on this litigation;  
4       right?

5           A.       Correct.

6           Q.       How many of those 384 hours did  
7       you use for this running of search terms,  
8       iteratively rerunning them and reviewing  
9       critically the published literature that  
10      resulted?

11          A.       No idea.

12          Q.       Can you give me any kind of  
13      estimate?

14          A.       No.

15          Q.       Do you remember doing it at  
16      all?

17          A.       Sure.

18          Q.       And about how many hours do you  
19      remember doing it?

20          A.       I don't remember how many  
21      hours.

22          Q.       Do you know how many pieces of  
23      literature you ultimately reviewed  
24      critically?



1                   A.       No.

2                   Q.       Can you give me any estimate at  
3 all?

4                   A.       No.

5                   Q.       You would agree with me it  
6 would have been tough for you to review  
7 36,292 pieces of literature in 384 hours;  
8 right?

9                   A.       To read them all? Yes.  
10 Impossible.

11                  Q.       But you can't give me any  
12 estimate as to how many of them you did read?

13                  A.       No. I could tell you that the  
14 search for, for example, chronic  
15 non-malignant pain and opioids probably comes  
16 up with less than 20 papers, I think.

17                  Q.       Okay.

18                  A.       Those, I read them all.

19                            So then others, there were lots  
20 of papers that I didn't consider to be  
21 relevant. They didn't come up in the search  
22 or there weren't many.

23                  Q.       Okay. But you choose not to  
24 identify in Exhibit C or anywhere else which

1 papers it was you did actually read; right?

2 MS. CONROY: Objection.

3 THE WITNESS: No, it's some  
4 cases. For example, the chronic  
5 non-malignant pain, for the number of  
6 people who have pain, I think there's  
7 specific literature cited for the EERW  
8 section. There's lot of literature  
9 mentioned.

10 In other cases there's specific  
11 literature mentioned.

12 Q. (BY MS. SAULINO) Are you  
13 testifying that unless -- that every piece of  
14 specific literature that you reviewed and  
15 relied on is listed somewhere in your report?

16 A. No.

17 Q. So there are some missing?

18 MS. CONROY: Objection.

19 THE WITNESS: I'm -- well,  
20 first of all, there's 35,000, 36,000  
21 articles that were part of the general  
22 search. Aside from giving you the  
23 titles, I didn't cite them because  
24 most of them I didn't rely on.

1           Although, I reviewed them to the  
2           extent that searching the abstracts  
3           and key words reviews them.

4                     There are other sections where  
5           there is detail on the number of  
6           papers and cites. For example, the  
7           impact of marketing on physician  
8           behavior and conduct. There's a lot  
9           of cites there. Probably not all of  
10          them.

11                    There's two papers that came  
12          out last week -- oh, I should have  
13          mentioned those before. They would be  
14          supplemental bases for my opinion, one  
15          that came out, I think yesterday.  
16          So -- that are relevant. And those  
17          are not in the report for obvious  
18          reasons. They didn't exist.

19                   Q.       (BY MS. SAULINO) So those are  
20          additional new bases for your opinions?

21                   A.       They're additional new bases  
22          for my opinions.

23                   Q.       And they're not included in  
24          anything you've testified to already; right?

1                   A.       Correct.  Forgot about those  
2     two.

3                   Q.       What are the names of those  
4     articles?

5                   A.       One came out of Yale, was --  
6     Ross is one of the authors.  That paper deals  
7     with -- correlates the money spent to  
8     influence physicians with the dose of opioids  
9     used by physicians.

10                               And the other one correlates  
11     death rates to higher dose.  It's kind of  
12     like a matched set.  They're both in JAMA, I  
13     think.  Ross is in JAMA.  I think the other  
14     one is also in JAMA.

15                   Q.       Now, if you look at page 48 of  
16     your report, at the top.

17                   A.       Okay.

18                   Q.       You have a section titled  
19     "Evaluation of funding source and conflicts  
20     of interest"; right?

21                   A.       I do.

22                   Q.       And there you say, "In addition  
23     to the factor reviewed above" -- I believe  
24     you meant to say "factors" there, right?

1           A.       Correct. That's a  
2       typographical error.

3           Q.       "Funding source and conflicts  
4       of interest should be reviewed and considered  
5       for all studies"; right?

6           A.       Yes.

7           Q.       Okay. And you say that because  
8       you believe -- and I'm now quoting from the  
9       top of page 49 of your report -- that "There  
10      is a high risk of bias when the producers of  
11      evidence have an invested interest in the  
12      results."

13          A.       Where are you now?

14          Q.       I'm looking at the second line  
15      of the top of page 49.

16          A.       Okay. Halfway through the  
17      sentence. Yes. That's part of that  
18      sentence.

19          Q.       Okay. I'm just asking whether  
20      you believe that to be true?

21          A.       Let me read the whole sentence.

22          Q.       Well, sir, I'm not really  
23      asking you whether you believe the sentence  
24      to be true. I'm just asking whether you

1 believe that there is a high risk of bias  
2 when the producers of evidence have an  
3 invested interest in the results. I actually  
4 thought that would be an easy one for you.

5 MS. CONROY: Objection.

6 THE WITNESS: That's a more  
7 complicated question than you might  
8 think. That's true, but there's  
9 evidence that disclosure also induces  
10 misrepresentation. So it goes both  
11 ways.

12 Q. (BY MS. SAULINO) Okay. Well,  
13 you also believe that whoever funds your  
14 organization owns it; right?

15 A. Are you reading from someplace?

16 Q. It is something that you  
17 included in one of your opinions, but I'm  
18 just asking you whether you believe that.

19 A. Out of context? No.

20 Q. So it's not something you  
21 generally believe?

22 MS. CONROY: Objection.

23 THE WITNESS: Yeah, I don't  
24 have a statistic on that. It's

1                   certainly not always true.

2                   Q.           (BY MS. SAULINO)   In any event,  
3                   for the reasons of potential bias, you  
4                   included funding source and industry bias as  
5                   one of the factors that would decrease your  
6                   confidence in a particular source of  
7                   evidence; right?

8                   A.           That's generally the direction  
9                   of the medical literature, correct.

10                  Q.           Okay.   And there, I wasn't  
11                  quoting but I was looking at the very last  
12                  sentence of 333.5.

13                               Just letting you know where I  
14                  was looking, sir.

15                  A.           Okay.

16                  Q.           Okay?

17                  A.           There's no question.

18                  Q.           So you are agreeing that you  
19                  included funding source and industry bias as  
20                  one of the factors that would decrease your  
21                  confidence in a particular source of  
22                  evidence?

23                  A.           Unless it was a statement  
24                  against interest.

1           Q.       Okay. You didn't say that  
2       here, did you?

3           A.       That's correct. I just  
4       modified it.

5           Q.       And have you modified your  
6       thinking on that since March 25th?

7           A.       No. It was incomplete, this  
8       sentence. I didn't incorporate the entire  
9       idea.

10          Q.       Now, you testified earlier that  
11       while you haven't been paid yet in this case,  
12       you are owed \$600 times 384 hours to date;  
13       right?

14          A.       Correct.

15          Q.       Probably more for today because  
16       it would be 650 for today; is that right?  
17       650 per hour?

18          A.       Correct.

19          Q.       Okay. And that, I did it on a  
20       calculator and I got \$230,400 owed up until  
21       this morning. Does that sound right to you?

22          A.       I didn't do the math. I'll  
23       take your word for it.

24          Q.       And that's just for your hours;



1 right?

2 A. Correct.

3 Q. So we then need to add to that  
4 all of the hours that have been spent by your  
5 staff and students; right?

6 A. Correct.

7 Q. At their hourly rates; right?

8 A. Correct.

9 Q. And do you get some of that  
10 money as well?

11 A. That money is all paid to me  
12 and then I pay them.

13 Q. Is it a complete pass-through  
14 or do you keep some of it?

15 A. There's no way to complete  
16 pass-through. I pay benefits, vacation,  
17 things like that. So I -- there's no way for  
18 me to calculate what the overage is. It's  
19 not a complete pyramid scheme like a law firm  
20 might run.

21 Q. So they each make their own  
22 hourly rate that's not the same as you're  
23 charging the plaintiffs?

24 A. They make an hourly rate and

1       time and a half for overtime that's -- I have  
2       a fixed rate for the plaintiffs.

3               Q.       What is your hourly rate for  
4       your students?

5               A.       I don't -- the students are \$20  
6       an hour.

7               Q.       No, I know. That you pay them.

8               A.       \$20 an hour.

9               Q.       And what about for each of your  
10       staff members?

11              A.       What their hourly rates are?

12              Q.       Yes.

13              A.       I don't recall.

14              Q.       Less than \$70 an hour?

15              A.       Well, I think their rate's  
16       generally between 25 and 35 or 40. But when  
17       they're working time and a half or  
18       double-time, which happens, then they could  
19       get up to 60 or \$70 an hour.

20              Q.       Do you charge the plaintiffs  
21       overtime?

22              A.       No. Plaintiffs get a fixed  
23       rate. So that's why I'm saying I -- the  
24       overage I get from them is not much, usually,

1       because I don't -- they're billed at a fixed  
2       rate.

3               Q.       Okay. In addition to that, you  
4       have previously testified that you've made  
5       certainly more than 5 million, probably more  
6       than \$6 million from testimony that you have  
7       given for plaintiffs over the years; right?

8               A.       Well, in litigation, I think  
9       it's both at the request of plaintiffs and  
10      defendants, yes.

11              Q.       Well, earlier you said that of  
12      your -- I think you said 4 to 500 times  
13      testifying, although previously you've said 6  
14      to 700 times testifying -- that the vast  
15      majority of that was testimony that the  
16      plaintiffs had been retained -- had retained  
17      you to do; right?

18              A.       That's correct.

19              Q.       And you've previously testified  
20      to that as well; right?

21              A.       Yes.

22              Q.       Now, you've never testified on  
23      behalf of a pharmaceutical company in  
24      litigation, where a plaintiff is alleging a

1       personal injury, have you?

2               A.       I don't testify on behalf of  
3       anybody, and I've not been retained by a  
4       pharmaceutical company in any cases.

5               Q.       Okay. And you've not been  
6       retained by a pharmaceutical distributor in  
7       any cases?

8               A.       Correct.

9               Q.       And you've not been retained by  
10      a pharmacy in any cases; right?

11              A.       Correct.

12              Q.       But you have said publicly that  
13      you believe that companies deserve full  
14      credit for lying, cheating, and endangering  
15      people's health; right?

16              A.       Correct.

17              Q.       You've also said that you  
18      believe that "Every day executives from  
19      corporations spanning the pharmaceutical and  
20      medical device industry, preoccupied with  
21      increasing profits and maintaining status as  
22      viable competitors in the industry, knowingly  
23      market unsafe or inadequately tested drugs  
24      and medical devices to raise their bottom

1 line"; right?

2 A. I think that's a correct quote.  
3 It's from the science article?

4 Q. It is a quote from an article  
5 by you and Dr. Ardolino?

6 A. Oh. So that's a published  
7 paper. That's a published book chapter now.  
8 Correct.

9 Q. You do hold that belief,  
10 though; right?

11 A. True.

12 Q. And you've made a lot of money  
13 off of those beliefs that you hold; right?

14 MS. CONROY: Objection.

15 THE WITNESS: No.

16 Q. (BY MS. SAULINO) Well, you've  
17 made certainly more than 5 million, probably  
18 more than 6 million up until this litigation,  
19 and then another couple hundred thousand so  
20 far; right?

21 A. That's correct. Those are not  
22 related ideas.

23 Q. So you're saying that your work  
24 for the plaintiffs in this case and in other

1 cases where you've testified holds no  
2 relationship to your beliefs that we just  
3 recounted?

4 A. No. It doesn't relate to my  
5 beliefs. That's correct. It relates to the  
6 fact that led to my beliefs.

7 Q. I see. And so isn't it true,  
8 though, sir, based on your own logic that you  
9 explain in your report, that all of the  
10 hundreds of thousands of dollars you've made  
11 in this case and the millions of dollars  
12 you've made over the years, testifying for --  
13 as having been retained by plaintiffs'  
14 lawyers is a factor that should lead jurors  
15 to decrease their confidence in the evidence  
16 that you present?

17 A. It's certainly something they  
18 should consider in evaluating my testimony.

19 Q. Okay.

20 A. There is a difference between  
21 this and the other biases discussed in the  
22 medical literature. That difference is this  
23 process, and it is not a trivial difference.

24 Q. When you say "That difference

1 is this process," you mean your  
2 evidence-based medicine combined with  
3 grounded theory approach that you have been  
4 discussing today?

5 A. No. I mean your  
6 cross-examination. I mean your ability to  
7 research and review everything I've written.

8 This room full of lawyers who  
9 are looking for any and every mistake I may  
10 have made limits my ability to twist, slant,  
11 or in any other way deviate from the facts.  
12 This process is much more rigorous, not even  
13 close, to peer review, to dissertation review  
14 or anything else. So when I prepare reports  
15 or testimony for this process, it's in  
16 anticipation of being reviewed in immense  
17 detail.

18 And not only that. I  
19 understand that everything that I've said in  
20 my entire life will be reviewed and will be  
21 compared to the opinions that I give in this  
22 litigation, as we sit here today.

23 So there's nothing like this  
24 process in the other areas or aspects of

1       bias. And so when I know -- when you know  
2       you're in this process, and I know I'm in  
3       this process, there's a lot of reasons that I  
4       want to stick to the truth as much as  
5       possible and not spin anything, or take  
6       anything out of context. Because I have  
7       great faith that you will be able, with all  
8       of your resources and with your great  
9       intelligence, to try to catch every minor or  
10      major error I make.

11           Q.       So those reasons that you just  
12      laid out would also lead you, wouldn't they,  
13      sir, to want to detail in your report every  
14      step that you took in order to get to each of  
15      the conclusions that you made?

16           A.       No. Can't do that. I don't  
17      have enough time. I'd be dead by the time  
18      the report was written.

19           Q.       So you're agreeing with me,  
20      sir, that you choose here not to detail each  
21      of the steps that you took to reach each of  
22      the conclusions that you made?

23                   MS. CONROY: Objection.

24                   THE WITNESS: Correct. I



1           had -- I detailed what I thought were  
2           the bases of my opinions that could be  
3           evaluated, as you have been evaluating  
4           them, if it was a way that was  
5           sufficient for someone to understand  
6           what I did and look at what I did and  
7           evaluate whether it was compatible  
8           with the data that I reviewed.

9                     And I am sure that if there was  
10           something that I said that was wrong,  
11           you will find it and you will correct  
12           it.

13                    In some ways, I very much value  
14           this process because if I made a  
15           mistake, I don't want to make a  
16           mistake. And so if you find someplace  
17           where I made a mistake, I want to  
18           correct it. I certainly want to say  
19           it in a public forum.

20           Q.       Now, sir, you just -- I'm sure  
21           you were joking, but you just said "I would  
22           be dead if I wrote down each of the steps  
23           that I took." Right? Meaning that it would  
24           take a long time to write that down?

1           A.       Hopefully I'm going to live  
2       long enough, yes. That's correct.

3           Q.       Okay.

4           A.       Yes.

5           Q.       But you're saying that they are  
6       steps that you did take, right?

7           A.       Well, yes. I take a lot of  
8       steps in my head that I don't write down.

9           Q.       And these are steps that you've  
10      taken in less than four months; right?

11          A.       No.

12          Q.       Well, you were retained in  
13      November of 2018; right?

14          A.       Yes.

15          Q.       You were presented with your  
16      assignment in November of 2018; right?

17          A.       Yes.

18          Q.       And that was the answerable  
19      question that you then applied your  
20      methodology to; right?

21          A.       Yes.

22          Q.       And that was about four months  
23      ago, wasn't it?

24          A.       Those facts individually are

1 correct. But remember, I've been working on  
2 this case and had access to some of these  
3 documents since 2003.

4 I've been reviewing opioid  
5 literature and studying opioids and pain  
6 since 1974.

7 So a lot of the information  
8 that goes into the report dates from 1974.

9 Q. And there's no way for us to  
10 know what in the report dates from 1974 and  
11 what in the report is something that you  
12 reviewed in connection with this litigation?

13 A. Well, you can assume anything  
14 that I read after November, okay? -- was at  
15 least in part -- that I incorporated into the  
16 report -- was in part related to my work in  
17 this case. Although, some of that literature  
18 I would have seen and read otherwise.

19 In other words, the Ross paper  
20 that I mentioned. Well, that was e-mailed to  
21 me last night by my other kid who's at Yale.

22 So -- because it just came out  
23 yesterday.

24 So now that, I would not have

1 read that last night had he not sent it to  
2 me.

3 Q. You say we can assume anything  
4 that you read after November was a part of  
5 the -- or related to your work on the report;  
6 right?

7 A. I think that's fair.

8 Q. Okay. Where do you list that?

9 A. I don't list it. You go by the  
10 dates.

11 Q. Oh, I see. So anything written  
12 after November?

13 A. Correct. Yeah. Anything  
14 written after November after I was retained  
15 in the case that was related to the case  
16 that's in the report, I read it in relation  
17 to the case.

18 Q. That's not terribly specific  
19 guidance, is it?

20 MS. CONROY: Objection.

21 Q. (BY MS. SAULINO) Not much of  
22 your opinion is based on things that were  
23 written after November of 2018; isn't that  
24 right?

1           A.       I don't -- I imagine most of  
2       what I wrote is based on things written  
3       before.

4           Q.       Okay. So what I'm asking you  
5       is, you said it would take a really long time  
6       for you to write down all of the steps you  
7       took in order to answer the question that you  
8       were asked in this litigation and then  
9       applied your methodology to; right?

10                   We've been talking about you  
11       would be dead by then, but we all know you  
12       were joking, and we all hope that doesn't  
13       happen, so it took a really long time is what  
14       I said.

15           A.       Right. We could take a vote on  
16       whether anybody hopes it doesn't happen, but  
17       that's correct. I bet you it won't be  
18       unanimous.

19                   SPECIAL MASTER COHEN: I'm  
20       neutral, I don't vote.

21                   MR. MIGLIORI: Can some of us  
22       vote twice? I'd like to vote twice.

23           Q.       (BY MS. SAULINO) But we can  
24       agree to what you were saying there.

1           A.       And that includes plaintiff  
2       lawyers. I guarantee that.

3           Q.       Fair enough. We can discuss  
4       this at a break.

5                       So what you were saying there  
6       is it would take you a really long time to  
7       write down all of the steps that you took;  
8       correct?

9           A.       Correct.

10          Q.       But these are steps that you  
11       took in four months; right? That's what I'm  
12       trying to get at.

13          A.       No, No. A lot of the steps  
14       began, as I said in 1974. I've been reading  
15       literature --

16                    Look, I did the reports in 2004  
17       in the Purdue literatures. I did the FDA  
18       presentation in 2013. I wasn't involved in  
19       any litigation between 2005, 2013 till  
20       November; right? I obviously had been  
21       staying up with the literature. Okay?  
22       Because -- and I was staying up with the  
23       issue because I, on my own, did the paper and  
24       presentation at FDA.

1                   Also, I brought that story to  
2     the L.A. Times. The L.A. Times story, that  
3     was based on my bringing that stuff to them.

4                   Q.       Okay.

5                   A.       So, I mean, I've been doing  
6     things got nothing to do with the litigation.  
7     I've been concerned about this issue for a  
8     long time. I've been reading about this  
9     issue for a long time, applying this same  
10    methodology.

11                  Q.       Okay. So but I'm asking you  
12    about your expert work in this case. Your  
13    methodology requires you to start with an  
14    answerable question, which you got in  
15    November of 2018; right?

16                  A.       I got that -- but that question  
17    is the question I've been applying --

18                         That question came from me,  
19    modified slightly by the lawyers. And that's  
20    the question I've been asking all the time.  
21    It's a similar question to what I ask -- I  
22    develop in every case I do.

23                         In other words, it's -- that's  
24    the -- the question of -- it's really a

1       general -- a more general question is, you  
2       know, why did this person get addicted and  
3       die? That's the question.

4                       I mean, it's a simple question,  
5       really.

6               Q.       Okay.

7               A.       But it's translated into kind  
8       of a more bite-sized piece there. Because  
9       when I go to the why question, you -- most  
10      people stop at the patient level. I don't  
11      stop at the patient level.

12                    Okay? I ask that question all  
13      the way to the generators of the  
14      manufacturers of the product, the  
15      distributors of the product, et cetera.

16              Q.       Okay.

17              A.       So that's just how I frame the  
18      question.

19              Q.       All right, sir. So --

20              A.       Sorry, go ahead.

21              Q.       It is fair to say that you  
22      didn't have access to the database of  
23      documents produced by defendants until  
24      November 2018; right?



1           A.       No. I had some of them in  
2       2003, 2004, and 2005.

3           Q.       And those were Purdue  
4       documents?

5           A.       Purdue and others. Because  
6       they produced other documents. I think they  
7       probably had some of the front group  
8       documents that were in that mix.

9           Q.       Tell me something, sir. Did  
10      the protective orders that you signed in  
11      those cases require you to destroy those  
12      documents after the litigation was over?

13          A.       The Purdue documents?

14          Q.       Uh-huh.

15          A.       I don't think so. I don't  
16      recall.

17          Q.       Well, clearly, you didn't. You  
18      kept them; right?

19          A.       Yeah. There were five CDs of  
20      documents that were released by the attorney  
21      general of Florida. I got those CDs. Those  
22      are not confidential.

23          Q.       So nowhere in your report do  
24      you give us any idea of which of your

1       opinions are based on things that you've  
2       known since 1970 and which of your opinions  
3       are based on things that you've learned since  
4       November of 2018; right?

5                       MS. CONROY:  Objection.

6                       THE WITNESS:  Yes, as I  
7       modified before.

8                       MS. SAULINO:  Okay.

9               Q.       (BY MS. SAULINO)  Now, you say  
10      that step 4 of the evidence-based medicine  
11      method, which you list on page 49, you say,  
12      "This step speaks for itself.

13                      "Once a critical analysis of  
14      the evidence has been completed, the findings  
15      can be applied to the situation at hand";  
16      right?

17              A.       Correct.

18              Q.       And you don't document what the  
19      situation at hand is, right?

20              A.       Well, the situation at hand  
21      would be the assignment, yeah.

22              Q.       Okay.  And you didn't write  
23      that down here, did you?

24              A.       I did not write that down.

1           Q.       And step 5 is a  
2       self-evaluation; right? An evaluation of  
3       performance?

4           A.       Correct.

5           Q.       And you say, "Guidelines exist  
6       for self-evaluation of each of the previous  
7       steps of EBM practice"; right?

8           A.       Right.

9           Q.       And then you said -- you then  
10      list seven questions for self-evaluation of  
11      finding the best external evidence; right?

12                   Or sorry -- for ask -- you  
13      start with asking answerable questions.  
14      There's a self-evaluation for that; right?

15                   I apologize. I skipped ahead.

16           A.       You skipped a section. That's  
17      right, yes.

18           Q.       Right. So you start with your  
19      self-evaluation for answering answerable  
20      questions; right?

21           A.       Right.

22           Q.       You then list a number of  
23      questions, but you say, "Not all of these  
24      questions applied to my practice of EBM in

1       this context. Of those which did apply, I  
2       found that my performance was satisfactory";  
3       right?

4               A.       Correct.

5               Q.       Which ones applied?

6               A.       Am I asking any clinical  
7       questions at all that apply? And am I asking  
8       well-formulated questions based on the  
9       guidance reviewed above? I think I apply.  
10      Am I using a map to locate my knowledge gaps  
11      and articulate questions? I didn't do that  
12      explicitly. I don't think that's doable in  
13      this situation because of the grounded theory  
14      method doesn't really apply to that kind of  
15      construct.

16                      Can I get myself unstuck when  
17      asking questions? Doesn't really apply.  
18      More clinical -- limited clinical stuff.

19                      Am I modeling the asking of  
20      answerable questions for my learners? I did  
21      not do that. That's really related to  
22      teaching.

23                      Am I writing any educational  
24      prescriptions in my teaching? Are they being

1       filled? I didn't do that. It's not part of  
2       my role here.

3                       Are we incorporating questions  
4       asking and answering it to everyday  
5       activities? No. Not part of my role here.  
6       Well, because I'm blocked from doing that  
7       because of the confidentiality orders.

8                       How well am I guiding my  
9       learners in the questions that -- in their  
10      question asking? Well, I did discuss the  
11      assignment, and when they got my report, the  
12      plaintiff lawyers asked a lot of questions  
13      about the report and the -- we discussed the  
14      nature of the report.

15                      Are my learners writing  
16      educational prescriptions for me? No. The  
17      plaintiff lawyers didn't write me any  
18      educational prescriptions. So those are the  
19      ones that didn't.

20                      Q.       So of your one, two, three,  
21      four, five, six, seven, eight, nine, ten  
22      questions here, three of them applied in this  
23      context?

24                      A.       I guess so, if you counted

1 right.

2 Q. And you chose, however, to list  
3 all of these questions and not give us any  
4 indication of which ones you were actually  
5 using.

6 A. Correct. I didn't explicitly  
7 state.

8 Q. Now, you have a -- the next  
9 self-evaluation is finding the best external  
10 evidence, which I accidentally skipped to  
11 earlier; right?

12 A. Correct.

13 Q. Okay.

14 A. No demerit points for that. Go  
15 ahead, skip anything you want.

16 Q. And you list a number of  
17 questions here; right?

18 A. Correct.

19 Q. Now, here you just say, "I  
20 found that my performance was satisfactory";  
21 right?

22 A. Right.

23 Q. So you didn't skip any of  
24 those?

1           A.       No, I didn't skip any of those,  
2       but the test is yours.

3           Q.       I'm sorry?

4           A.       The test is yours. Better than  
5       the self-evaluation is this two days.

6           Q.       You then -- well, you -- you  
7       say here in your report you performed a  
8       self-evaluation, sir; right?

9           A.       Correct.

10          Q.       That's what I'm asking you  
11       about right now.

12          A.       That's correct. But what I'm  
13       saying is this external evaluation is much  
14       better than my own.

15          Q.       You then say, "Self-Evaluation  
16       for critically appraising the evidence for  
17       its validity and potential usefulness";  
18       right?

19          A.       Correct.

20          Q.       Here again, not all of the  
21       questions applied, but you chose to write  
22       them all down and not give us any indications  
23       of which ones you used; right?

24          A.       Correct.

1 MS. CONROY: Objection.

2 Q. (BY MS. SAULINO) And then  
3 self-evaluation for applying results in  
4 practice; right?

5 A. Right.

6 Q. And again, not all of them  
7 applied. You wrote them all down and didn't  
8 give us any indication of which ones you  
9 used; right?

10 A. None of these apply to practice  
11 because there's a confidentiality order in  
12 the case.

13 Q. Well you say here of those  
14 which did apply, I found that my performance  
15 was satisfactory.

16 A. Let me just --

17 Well, the second one applies,  
18 but it's not really relevant to this process.

19 It does apply, but not relevant  
20 to what we're doing here today.

21 Q. All right. Well, let me ask  
22 you: Your evaluations, your self-evaluations  
23 that you performed here, where are those  
24 documented?



1                   A.       They're not documented.

2                   Q.       They're not documented  
3 anywhere?

4                   A.       Correct.

5                   Q.       Okay. So there's no way for us  
6 to replicate them?

7                   A.       No. You can go through this  
8 process. I mean, that's what -- I have no  
9 doubt that you have taken great effort over  
10 the past four weeks to attempt to replicate  
11 and test every opinion I've given and every  
12 basis. So there's plenty -- I imagine that's  
13 what we're going to spend most of the day  
14 doing.

15                               So you can certainly critically  
16 evaluate what I've done, based on your access  
17 to the database and the literature, the same  
18 as I have.

19                   Q.       Sir, what you seem to be saying  
20 is, I too can look at the database and the  
21 literature that you -- the massive database  
22 that you've listed and the massive set of  
23 literature that you've listed and I can come  
24 to the same conclusions you did. That's what

1       you're saying?

2               A.       No.   You can criticize -- I  
3       don't think you want to do that.   That would  
4       probably not be in your client's best  
5       interest.

6                       What I'm saying is you can look  
7       at the data.   You can talk to your client.  
8       You can talk to lots of experts, and you can  
9       evaluate what I've written and criticize me,  
10      based on the same data sets I have.

11              Q.       So, sir --

12              A.       And I expect that you've done  
13      that, and that we'll see the results.

14              Q.       You understand that you're  
15      being offered as an expert in this  
16      litigation; right?

17              A.       Right.

18              Q.       That you have some expertise to  
19      offer to bring to bear on this methodology  
20      that you've laid out and the approaches that  
21      you've taken; right?

22              A.       Correct.

23              Q.       That you have something above  
24      and beyond what other people have; right?

1           A.       I have something beyond --  
2       above and beyond what a layman has.

3           Q.       I see. But anyone else who has  
4       a little more knowledge of looking at legal  
5       databases could do what you do?

6           A.       I don't know what they could  
7       do.

8           Q.       Okay. What I'm asking you,  
9       sir, is --

10          A.       That's not what I referred to  
11       before. I referred to you folks.

12          Q.       Let me be more clear. What I'm  
13       asking you, sir, is I have asked you a number  
14       of questions about how to replicate  
15       statements you've made in your report as an  
16       expert; right?

17          A.       Yes.

18          Q.       And your response has been  
19       repeatedly that you're sure I'm doing that  
20       already; right?

21                   MS. CONROY: Objection.

22                   THE WITNESS: No, that's not  
23       exactly true. You didn't ask that  
24       question explicitly. If you want to



[illegible]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

12 Q. And nowhere in your report do

13 you provide us the ability to do that for any

14 particular opinion, do you?

15 A. No. You have that opinion

16 because you -- ability because you have the

17 same access to the same data I have plus

18 more. You have all of the privileged and

19 confidential documents.

20 Q. Sir.

21 A. You have the ability to talk to

22 the -- to your own clients.

23 Q. I was asking a different

24 question.

1                   Nowhere in this report do you  
2     provide us the ability to replicate what you  
3     did in order to come to any particular  
4     opinion.

5           A.       Wrong.

6           Q.       Nowhere in this report do you  
7     provide us the ability to look at one opinion  
8     and know what you looked at, what iterative  
9     searches you made, what conclusions you came  
10    to, how you challenged them, how you  
11    self-appraised them, none of that; right?

12          A.       In detail, that's correct.

13          Q.       Okay. That's all I was asking.

14          A.       All right.

15                   THE WITNESS: Can we take a  
16     break?

17                   MS. SAULINO: Yeah, I think now  
18     is a good time for a break.

19                   THE VIDEOGRAPHER: Off the  
20     record. 2:41.

21                   (Recess taken, 2:41 p.m. to  
22     3:10 p.m.)

23                   THE VIDEOGRAPHER: We are back  
24     on the record at 3:11.

1 THE WITNESS: Okay. So these  
2 are the two articles that I mentioned  
3 that came up this week as new bases.

4 Q. (BY MS. SAULINO) Okay. So  
5 thank you, Doctor. You're looking at a  
6 folder that you have marked 26, which is a  
7 red folder and we're going to mark as  
8 Exhibit 6 to your deposition.

9 (Whereupon, Deposition Exhibit  
10 Egilman 6, Folder 26 arrow up does =  
11 arrow up death, was marked for  
12 identification.)

13 Q. (BY MS. SAULINO) All right.  
14 Dr. Egilman, I'd like to turn to the grounded  
15 theory approach, which you begin discussing  
16 on the bottom of page 38 of your report.

17 A. Okay.

18 Q. Now, you say that "Grounded  
19 theory is an inductive method which allows  
20 analytical categories to emerge from the data  
21 presented"; right?

22 Second sentence.

23 A. 38?

24 Q. Yeah. Second sentence under



1 "State of the art methods." The portion  
2 where you start talking about the grounded  
3 theory approach.

4 A. Oh, yeah, right. Go ahead.

5 Q. Okay. And you then two  
6 sentences later say, "The grounded theory  
7 approach recognizes that data collection and  
8 analysis are inherently interrelated  
9 processes and calls for analysis to begin at  
10 the time of first data collection"; right?

11 A. Correct.

12 Q. And the grounded theory  
13 approach -- and I'm not reading right now,  
14 but based on what I have seen in your report,  
15 is it fair that the grounded theory approach  
16 entails an initial formulation of hypotheses  
17 and then you -- as you've said over and over  
18 today, you constantly revise those during the  
19 course of research; right?

20 A. Well, you start with a -- you  
21 just start with a question. And then not  
22 necessarily a hypothesis.

23 Q. Well, then let's look at your  
24 report. You say towards the bottom of

1       page 38, "As described by Corbin and Strauss,  
2       the hypotheses are constantly revised during  
3       the course of the research, until they hold  
4       truth of the phenomena under study as  
5       evidence in repeated interviews, observations  
6       or documents"; right?

7               A.       Right.

8               Q.       Do you agree with that  
9       statement?

10              A.       Well, I would say hypotheses  
11       are questions.

12              Q.       Okay. Do you see a distinction  
13       between the two?

14              A.       I think you could perhaps --  
15       yeah, there's a distinction because  
16       hypothesis generally is a -- generally  
17       used --

18                      Well, in science use a null  
19       hypothesis, which implies a non-causal  
20       relationship between two items. And a  
21       question is broader than that.

22              Q.       Okay. With respect to the  
23       grounded theory approach, which you discuss  
24       here on pages 30 -- starting on 38 and moving

1       on to 39, you don't list either initial  
2       hypotheses or initial questions, do you?

3             A.       No, not exactly.

4             Q.       And you don't list your initial  
5       hypotheses or questions to be used in the  
6       grounded theory approach anywhere in your  
7       report, do you?

8             A.       No. Not correct.

9             Q.       Where do you list them?

10            A.       Well, we've gone over some of  
11       them. Some of the background questions were  
12       listed. And then I think in the EERW  
13       section, I think there are hypotheses or  
14       questions listed there.

15                    In the critique of the  
16       Rappaport, chicken and egg constructs, I  
17       think in the chronic pain analysis with  
18       respect to opioid treatment.

19                    Off-label promotion. And the  
20       12-hour dosing regimens, I think certainly  
21       those incorporate questions.

22             Q.       You're talking about particular  
23       opinions that you remember?

24             A.       Correct.

1           Q.       Okay. So with respect to  
2       particular opinions, if we see questions --  
3       if we see initial questions or initial  
4       hypotheses listed there, then you intended  
5       those to be an indication of the initial  
6       questions or hypotheses that you were using  
7       with the grounded theory approach?

8           A.       Or questions, yes.

9           Q.       You said "or questions"?  
10       Sorry?

11          A.       Or questions, yes.

12          Q.       And I said "initial hypotheses  
13       or questions." Yes. So I think we're saying  
14       the same thing. If we see them listed with  
15       respect to an opinion, hypotheses or a  
16       question, you intended that to be a question  
17       of what you used as your initial question or  
18       hypothesis for the grounded theory approach?

19          A.       Yes. Or the evidence-based  
20       medicine question, depending on what the  
21       issue was.

22          Q.       But again, even for the  
23       opinions where you do list questions or  
24       hypotheses, you don't tell us which approach

1       you're using explicitly in the report.

2               A.       It's not written explicitly,  
3       that's correct.

4               Q.       Okay. And for -- and  
5       otherwise, we have no way of knowing what  
6       your initial hypotheses or questions were;  
7       right?

8                       MS. CONROY: Objection.

9               Q.       (BY MS. SAULINO) For the  
10       grounded theory approach?

11              A.       No.

12              Q.       No, we do not?

13              A.       No, I don't agree with your  
14       statement/question.

15              Q.       Will you agree with me that  
16       only a few of your opinions list initial  
17       questions or hypotheses; right?

18              A.       No, not necessarily. I gave  
19       you the ones I could remember. I'd have to  
20       go through them all to see.

21              Q.       Okay. Well, is it fair to say  
22       that for those that do not list an initial  
23       hypothesis or question, there's no way for us  
24       to know what it was?

1                   A.       No.

2                   Q.       How would we be able to find  
3       that in your report?

4                   A.       Well, if you look at  
5       Opinion 185, Purdue trained Walgreens'  
6       pharmacists. So that would be the question.  
7       Did Purdue train Walgreens' pharmacists?  
8       That's the question that I was answering, for  
9       example.

10                               186. Did Purdue use friend  
11       groups? I put Purdue use friend groups. You  
12       just put a "did" in front and that's your  
13       question.

14                   Q.       So for each and every one of  
15       your opinions, we should assume, then, that  
16       the opinion turned out to be what the initial  
17       question was?

18                               That's what you're saying?

19                   A.       No.

20                   Q.       So again I ask you, sir, how do  
21       we know for any individual opinion what the  
22       initial question or hypothesis was if you  
23       didn't list it for us?

24                   A.       I gave you two examples. I can

1 go through each opinion.

2 Q. Well, sir --

3 A. And give you -- and go through  
4 them if you want. I don't think you want me  
5 to do that.

6 Q. The two examples that you just  
7 gave me were 185 and 186.

8 And for each of those examples,  
9 you read the opinion and put a did in front  
10 of it. Right?

11 A. Correct.

12 Q. Which means, then, that you  
13 started with the question that ended up being  
14 your opinion; right?

15 A. No. It means there was a  
16 question and I gave the answer.

17 Q. I see. For any of your  
18 opinions, was there -- is there a way to see  
19 that you started with a question that is  
20 different than where you ended up?

21 A. I think so.

22 Q. Is there a way to see it in  
23 your report?

24 A. I think so.

1           Q.       Okay. So we would do that by  
2 looking at your opinion, looking at the  
3 basis, and if we see a question there, we'll  
4 know what question you started with; right?

5           A.       That would be true.

6           Q.       Okay. If we look at the  
7 opinion, look at your report, there is no  
8 question there, we don't have any way of  
9 knowing whether you started with something  
10 different than where you ended up; right?

11          A.       No.

12          Q.       We don't have any way of  
13 knowing one way or the other, do we?

14          A.       No, you do. I gave you some  
15 examples.

16          Q.       Well, sir, I -- I see your  
17 examples. Example 185 you said, your opinion  
18 is Purdue trained Walgreens pharmacists. And  
19 that we should then assume that your question  
20 was, did Purdue train Walgreens pharmacists;  
21 correct?

22          A.       Correct.

23          Q.       So what you're telling me is  
24 that for each and every one of your opinions,



1 unless you otherwise list a question or  
2 hypothesis, we should assume, then, that the  
3 question you asked was the opinion you ended  
4 up with; right?

5 A. No.

6 Q. Well then how else will we know  
7 how to figure it out?

8 A. Well, it's going to be  
9 different for different opinions. I'd have  
10 to go through each and every one.

11 Q. And you didn't provide that  
12 information in your report; right?

13 A. It's not explicit. It's  
14 implicit. You would have to infer that when  
15 I wrote "Purdue trained Walgreens'  
16 pharmacists," that that was a relevant answer  
17 to a question about whether Purdue was  
18 involved in the training of Walgreens'  
19 pharmacists.

20 Q. You say that's implicit?

21 A. Yes.

22 Q. There's no indication in your  
23 report that your question was did Purdue  
24 train Walgreens pharmacists, is there?

1           A.       That question is not part of  
2       that opinion.

3           Q.       So, again, unless you list an  
4       actual question in the bases for your  
5       opinion, we have no way of knowing where you  
6       started.

7                   MS. CONROY:  Objection.

8                   THE WITNESS:  No.

9           Q.       (BY MS. SAULINO)  How will we  
10      know by looking at your report?

11          A.       It's obvious in the case of  
12      many of the answers, if not all of them.

13          Q.       Sir, if it's obvious then why  
14      did it require expertise?

15                  MS. CONROY:  Objection.

16                  THE WITNESS:  The formulation  
17      of the question required expertise.  
18      The understanding of what the question  
19      was may also require expertise.

20          Q.       (BY MS. SAULINO)  If the  
21      formulation of the question required  
22      expertise, then wouldn't we need to see your  
23      expertise in order to know what the question  
24      was?

1           A.       I'm not sure I understand that  
2       question. The answer, I think, is no, beyond  
3       knowing what I've already told you about my  
4       expertise.

5           Q.       So you can't give me any other  
6       way to figure out what question you began  
7       with for any opinion for which you don't list  
8       a question.

9           A.       I said I think it's obvious  
10      from most of the opinions what the question  
11      was.

12          Q.       Okay.

13          A.       Remember that the overriding  
14      question is the assignment. So all of these  
15      are subanswers to the assignment question.

16                 So the question for all of  
17      these is the assignment, and then all of  
18      these are answers to the assignment.

19                 Now, there are implicit  
20      subquestions that require expertise, and  
21      that's what all of these opinions are.

22          Q.       Okay. You didn't say anywhere  
23      in Section 3.2, starting on page 38, that  
24      your overall question that you were answering

1       was the assignment that you've now given us;  
2       right?

3               A.       Correct.

4               Q.       And you do say, though, on  
5       page 39 at the bottom --

6               A.       Hang on one sec.

7                       Go ahead.

8               Q.       On page 39 at the bottom, you  
9       do say that after -- so you -- you list some  
10      search terms that you used; right?

11              A.       In the middle?

12              Q.       Mm-hmm.

13              A.       Yes.

14              Q.       And then you say, "After the  
15      emergent" set of -- I'm sorry -- emergent  
16      "subset of documents was reviewed, key themes  
17      and concerns were identified, including  
18      documents specifically pertaining to  
19      evidence-based medicine, third-party interest  
20      groups, public/private partnerships, EERW  
21      study design, chronic pain treatment, return  
22      on investment for marketing techniques,  
23      hospital licensing and accreditation, state  
24      medical board licensing, off-label promotion,

1 diversion, and 12-hour dosing regimens";  
2 right?

3 A. Yes.

4 Q. You don't list what the key  
5 themes and concerns were that you identified;  
6 right?

7 A. You just read them.

8 Q. So those are the key themes and  
9 concerns?

10 A. Those were some, probably not  
11 all of the key themes and concerns.

12 Q. And there's no way for us to  
13 see from your report what all of your key  
14 themes and concerns were; right?

15 A. No. All of the ones -- they  
16 were all in the report. So anything in the  
17 report you can assume is a key theme or  
18 concern.

19 Q. And the only way that we would  
20 be able to get there from your report is just  
21 by making an assumption?

22 MS. CONROY: Objection.

23 THE WITNESS: No.

24 Q. (BY MS. SAULINO) Well, if I

1        wanted to identify all of the key themes and  
2        concerns that you identified when you  
3        reviewed the emergent subset of documents  
4        that came out of the search terms that you  
5        identify on page 39, I would start with the  
6        list you provide here. And where else would  
7        I find the rest of them?

8            A.        If there are others that are  
9        not mentioned here, they would be in the  
10       opinions.

11           Q.        So -- but there is no way for  
12       us to know precisely which opinions contain a  
13       key theme or concern that you identified  
14       after reviewing the documents that emerged  
15       from your search using the key terms  
16       identified on page 39.

17           A.        No.

18           Q.        There is a way for us to know?

19           A.        Yes.

20           Q.        And what is that way?

21           A.        They all came out of the  
22       searches. It's not that -- they weren't -- I  
23       didn't dream them like Kaiko dreamed that,  
24       you know, OxyContin was a 12-hour drug. That

1 all came out of the searches.

2 Q. Well, you'd agree with me,  
3 wouldn't you, sir, that grounded theory  
4 approach is an iterative process?

5 A. Yes.

6 Q. So you do one set of searches.  
7 You come up with key themes and concerns.  
8 You do more searches. You continue to test;  
9 right?

10 A. Yes.

11 Q. Testing and repetition is  
12 important to the grounded theory approach;  
13 right?

14 A. Well, it may or may not be  
15 important. There's no real -- in general,  
16 yes.

17 Q. You and I just looked on  
18 page 38 at a quote you put in your report  
19 from Corbin and Strauss that says, "The  
20 hypotheses are constantly revised during the  
21 course of research until they hold true for  
22 the phenomena under a study as evidenced in  
23 repeated interviews, observations or  
24 documents"; right?

1                   So repetition is important;  
2     right?

3           A.       Correct.

4           Q.       All right.  So what you're  
5     telling me now is that in order to figure out  
6     what key themes and concerns you started with  
7     and then tested with your repeated process,  
8     we just look at the opinions and every  
9     opinion is a key theme or concern that you  
10    started with?

11          A.       No.  It doesn't say what you  
12    start with.  It says -- this is an iterative  
13    process, and it says -- this sentence that  
14    you just didn't read says they're constantly  
15    revised.

16          Q.       Right.

17          A.       So the end revision of whatever  
18    the key theme or concern is is what appeared  
19    in the report as an opinion.

20          Q.       And I'm asking how we figure  
21    out where you started, sir.

22                   It's not in the report, is it?

23          A.       Yes, it is.  You start on  
24    page 39 in the middle with all those



1 searches.

2 Q. Okay.

3 A. And then those searches  
4 resulted in a subset of other items, not --  
5 this is not a complete list of all the other  
6 items but many of these. And then all of  
7 these then resulted in opinions.

8 Q. Okay. And what I'm looking for  
9 is where you list the subset of other items  
10 that you were just talking about. Some of  
11 them are listed here, as you just  
12 acknowledged, but not all of them.

13 A. I don't think all of them, but  
14 I -- you know, it's possible that all of the  
15 opinions are subsets of these opinions.

16 Q. You don't know one way or the  
17 other sitting here today?

18 A. I haven't evaluated it for that  
19 question. That's not something I did.

20 Q. And then you say, "Additional  
21 searches were conducted to explore these and  
22 other more specific topic areas as they  
23 arose." Right?

24 A. Correct.

1           Q.       You don't give us any search  
2       terms or parameters for those additional  
3       searches that you conducted; right?

4           A.       That's correct.

5           Q.       Okay. So there's no way for us  
6       to know what those were?

7           A.       That's correct.

8           Q.       Okay. And then you say, "This  
9       iterative analysis formed the basis for my  
10      state-on-the-art opinions in this case."

11          A.       That's correct.

12          Q.       Did you mean "state of the  
13      art"?

14          A.       Yes.

15          Q.       Okay. And you believe that  
16      your opinions are state of the art; right?

17          A.       What do you mean by "state of  
18      the art"?

19          Q.       I'm using your words, sir.

20          A.       My words are they're state of  
21      the art -- there's various definitions of  
22      state of the art. There's a medical state of  
23      the art, and then there's this -- this  
24      description of state of the art which

1      generally is historical analysis of what went  
2      on and why.  And that's what this is.

3 Q. Okay. But again, you don't  
4 provide us a roadmap to your historical  
5 analysis of what went on and why; right?

6 MS. CONROY: Objection.

7 THE WITNESS: That's not true.

8 I think it's incorporated in the  
9 opinions.

10 Q. (BY MS. SAULINO) Other than  
11 assumptions that one would make by looking at  
12 the opinions, you don't provide a roadmap to  
13 us about how you've used your process to get  
14 there; right?

15 MS. CONROY: Objection.

16 THE WITNESS: No.

17 Q. (BY MS. SAULINO) You do  
18 provide a roadmap?

19           A.       Well, I provide in some cases a  
20       specific roadmap. In other cases, I give you  
21       a general idea of where to go.

|   |   |   |
|---|---|---|
| 1 | 2 | 3 |
| 4 | 5 | 6 |
| 7 | 8 | 9 |



[illegible]

[illegible]

[illegible]

[illegible]



[illegible]

[illegible]

[illegible]

[illegible]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

7 Do you have the McKesson  
8 Redweld?

9 MS. SAULINO: Okay. Can I see  
10 what you're giving him right now?

11 Q. (BY MS. SAULINO) So,  
12 Dr. Egilman, what you have just asked the  
13 plaintiffs' lawyers to provide you is what  
14 you called the McKesson Redweld?

15 A. Correct.

16 Q. And I only just briefly flipped  
17 through what you called the McKesson Redweld,  
18 but is the McKesson Redweld a compilation of  
19 documents that mention McKesson?

20 A. Correct.

21 Q. So what you're saying is that  
22 in order to figure out the basis for any one  
23 of your opinions that reference McKesson, we  
24 need to look at all of your opinions that

1 reference McKesson?

2 A. Not necessarily. But --

3 Q. Okay.

4 A. Not necessarily, no.

5 Q. Then how would we know, from  
6 looking at your report, sir, anything but  
7 other than the one document that you list in  
8 Exhibit B.85 which you list as the only  
9 support for your Opinion 85?

10 A. You would ask me here. Okay?  
11 Or you could search the report for all of the  
12 McKesson opinions, which are searchable by  
13 McKesson.

14 You could pull the documents,  
15 as I have done, and put them all in a  
16 Redweld, and then you'd have everything that  
17 I wrote that might be relevant to all of my  
18 McKesson opinions.

19 Q. Okay. So what you're saying  
20 is, if I took everything in your report that  
21 mentioned McKesson, each of the McKesson  
22 opinions, and put them together, I would have  
23 the basis for any one of your McKesson  
24 opinions?

1                   A.       No, not necessarily.

2                             If you wanted to know if there  
3       were other opinions that related to this  
4       opinion, then you'd look at the other  
5       opinions and say, "Oh, I see. That's related  
6       too," because there's a contract between  
7       Purdue and McKesson for marketing services,  
8       which is obviously related to this Redweld.

9                   Q.       You don't provide that roadmap  
10       in your report, do you?

11                   A.       No. You'd have to actually  
12       search for all of the McKesson opinions and  
13       assume and find the contract between McKesson  
14       and its distributors showing that they were  
15       marketing for them.

16                   Q.       Okay.

17                             Now, are you willing to agree,  
18       sir, that if we take the compilation of each  
19       of the opinions that mentions McKesson, then  
20       we would have the full set of pieces of  
21       evidence that you relied on for -- that you  
22       possibly relied on for any one McKesson  
23       opinion?

24                   A.       No.

1           Q.       So there's no way for us to  
2 know the full set of evidence that you relied  
3 on for any one McKesson opinion?

4           A.       No. Not true.

5           Q.       You don't believe that's true?

6           A.       Correct.

7           Q.       There is a way for us to know  
8 the full set of evidence that you relied on  
9 for any one McKesson opinion?

10          A.       True.

11          Q.       In your report you say that  
12 somewhere?

13          A.       No.

14                   It depends on the opinion.

15                   Maybe. Yes and no. Probably  
16 "yes" and "no" is the answer to that  
17 question.

18          Q.       When you say "It depends on the  
19 opinion," what do you mean?

20          A.       I mean, some opinions may have  
21 all of the documents that I could find  
22 relevant to that opinion.

23                   Other opinions may -- may be  
24 supported by other opinions also in the



1 report.

2 Q. You don't tell us in any of  
3 your opinions that this opinion also relies  
4 on evidence related to another opinion;  
5 right?

6 There's no -- there's no  
7 opinion that says that?

8 A. There's no cross-reference  
9 opinion. I think that's -- I think there are  
10 a couple of cross-reference opinions, but in  
11 general that's correct.

12 Q. And there's no way for us to  
13 know if we're looking at any one opinion,  
14 that this happens to be one of the opinions  
15 that lists all of the information that you  
16 relied on?

17 A. Well, that's true. Absolutely.  
18 Because all of the opinions -- all of the  
19 information I relied on is all the  
20 information that I reviewed, all of the  
21 database. I didn't put that in every  
22 opinion.

23 Q. You relied on the entire  
24 database to come to each and every one of



■ [REDACTED] [REDACTED]  
■ [REDACTED]  
■ [REDACTED] [REDACTED]  
■ [REDACTED]  
■ [REDACTED]

6 Q. Okay. So --

7 A. I'm not trying in each of these  
8 opinions to give you every piece of evidence  
9 that may support the opinion. I didn't have  
10 enough time to do that.

11 Q. Well, you had enough time to  
12 come to the conclusion; right?

13 A. I did.

14 Q. You had enough --

15 A. With the evidence that I  
16 thought I had.

17 Q. And you had enough time to  
18 figure out that you had enough evidence for  
19 that conclusion; right?

20 A. Right.

21 Q. So surely you had looked at the  
22 evidence in order to come to that conclusion;  
23 right?

24 A. Right.

1           Q.       But you didn't have time to  
2       then simply note the documents?

3                   MS. CONROY:  Objection.

4                   THE WITNESS:  I couldn't note  
5       for every opinion all the evidence  
6       that I looked at to -- that related to  
7       that particular opinion.  It would  
8       take too long and it would be too  
9       voluminous.

10          Q.       (BY MS. SAULINO)  We looked  
11       earlier today at your steps of your  
12       evidence-based medicine method; right?

13          A.       Correct.

14          Q.       Okay.  And on page 41, you list  
15       step 2.  3.3.2.

16          A.       Hang on one second.  
17                   What page?

18          Q.       Page 41.

19          A.       Okay.

20          Q.       Step 2 is "Systematic retrieval  
21       of best evidence available"; right?

22          A.       Correct.

23          Q.       So you didn't do that here?

24                   MS. CONROY:  Objection.



[illegible]

[illegible]

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting department in ensuring the integrity of the financial statements. It also highlights the need for regular audits and the importance of transparency in financial reporting.

2. The second part of the document focuses on the implementation of internal controls to prevent fraud and ensure the accuracy of financial data. It outlines the key components of a robust internal control system, including segregation of duties, authorization procedures, and regular monitoring and evaluation.

3. The third part of the document addresses the challenges faced by the organization in managing its financial resources and the strategies adopted to overcome these challenges. It discusses the importance of budgeting and financial forecasting, as well as the need for effective risk management and contingency planning.

4. The fourth part of the document provides a detailed analysis of the organization's financial performance over the past year, including a comparison of actual results with budgeted figures. It identifies areas of strength and weakness and provides recommendations for improving financial performance in the future.

5. The fifth part of the document discusses the organization's financial position and the impact of external factors on its financial health. It highlights the need for ongoing monitoring and reporting to stakeholders and the importance of maintaining a strong financial foundation for long-term success.

6. The sixth part of the document provides a summary of the key findings and conclusions of the financial review. It emphasizes the need for continued commitment to financial integrity and the importance of regular communication and collaboration between all departments in achieving the organization's financial goals.

7. The seventh part of the document outlines the action plan for the upcoming year, including specific measures to be taken to improve financial performance and ensure compliance with all applicable regulations. It also identifies the responsible parties and the timeline for implementation.

8. The eighth part of the document provides a final summary and a statement of the organization's commitment to financial transparency and integrity. It expresses confidence in the organization's ability to meet its financial obligations and achieve its long-term goals.



[illegible]

[illegible]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED] [REDACTED]

■ [REDACTED]

7 Q. All right. Let's look at --

8 A. Did you want to mark this one  
9 or no?

10 Q. We did mark it. I gave you the  
11 marked copy.

12 A. Oh, I'm sorry.

13 Do you want to take -- hang on  
14 one second while I give this to the court  
15 reporter.

16 MS. SAULINO: Sure.

17 Q. (BY MS. SAULINO) Let's look at  
18 Exhibit -- let's look at page 77 of your  
19 report.

20 A. Okay.

21 Q. Do you see Opinion 7.100?

22 A. I do.

23 Q. Opinion "Healthcare  
24 Distribution Management Association, HDMA,

1       now HDA, was responsible for sale of  
2       unapproved opioids"; right?

3               A.       Correct.

4               Q.       And you say, "See Exhibit B.100  
5       hereto attached"; right?

6               A.       Correct.

7               Q.       And we -- I'm going to hand you  
8       Exhibit B.100, unless you have a different  
9       version of it.

10              A.       Which number is it?

11              Q.       100.

12              A.       I have a different version.

13              Q.       Okay. Shall we mark that one?

14              A.       If you like.

15              Q.       Okay. So I've handed you what  
16       we've marked as Exhibit 9 to your deposition,  
17       which is your version of Exhibit 100 to your  
18       report.

19              A.       Right.

20                      (Whereupon, Deposition Exhibit  
21       Egilman 9, Opinion - HDMA was  
22       responsible for sale of unapproved  
23       opioids, was marked for  
24       identification.)

1           Q.       (BY MS. SAULINO) And again,  
2 here, for Opinion 100, you cite a single  
3 exhibit; right?

4           A.       Well, I cite a single exhibit,  
5 but it references several FDA documents.

6           Q.       Your opinion does not reference  
7 several FDA documents; right? The exhibit  
8 itself does?

9                   MS. CONROY: Objection.

10                   THE WITNESS: The exhibit,  
11 which is the basis of the opinion,  
12 references several FDA documents.

13           Q.       (BY MS. SAULINO) And when I  
14 say, "The exhibit itself does," I mean not  
15 your writing, but in fact the e-mail chain  
16 dated Monday April 27, 2009.

17           A.       That's correct.

18           Q.       Okay. So you're saying that  
19 the FDA documents that are referenced in the  
20 document that you have screenshotted into  
21 Exhibit 100 should also be considered part of  
22 the basis of your opinion?

23           A.       Yes.

24           Q.       Okay. And that's everything

1       that is the basis of your Opinion 100?

2               A.       Correct.

3               Q.       And so there were no other  
4       interviews that supported this opinion?

5               A.       Correct. I didn't know I could  
6       interview your personnel.

7               Q.       No deposition testimony?

8               A.       Correct. I can't take  
9       depositions for sure.

10              Q.       Well, you said you read a  
11       number of them, sir.

12              A.       Right. There's no deposition  
13       testimony on this issue.

14              Q.       Did you look?

15              A.       Yes.

16              Q.       And so you don't cite any  
17       deposition testimony about the HDMA at all  
18       here, right?

19              A.       Not on this opinion. That's  
20       right.

21              Q.       Okay.

22                      There's no other data listed  
23       here; right?

24                      MS. CONROY: Objection.

1 THE WITNESS: Correct.

2 Q. (BY MS. SAULINO) No documents  
3 other than those we've just talked about;  
4 right?

5 A. Correct.

6 Q. There's no way that we can see  
7 your original question or hypothesis for this  
8 opinion; right?

9 A. Right. You'd have to put a  
10 "did" in front of the opinion.

11 Q. But you don't tell us here;  
12 right?

13 A. I didn't put the "did" in.

14 Q. You didn't give us any  
15 indication that we were supposed to assume a  
16 "did"; right?

17 A. Correct.

18 Q. And there's no indication here  
19 that you've revised your hypothesis or  
20 ensured it held true under repeated study;  
21 right?

22 A. Except for checking the  
23 underlying of FDA documents, right.

24 Q. So by checking the underlying

1       FDA document, we would know that you started  
2       with a different original hypothesis and  
3       revised it?

4               A.       No.

5               Q.       Okay. Well, that was my  
6       question.

7               A.       No, it wasn't.

8               Q.       There's no way for to us know  
9       if you started with a different original  
10      hypothesis and revised it; right?

11              A.       That's correct.

12              Q.       And you say checking the  
13      underlying FDA documents. What do you  
14      believe that would provide us?

15              A.       Well, that was under the  
16      question about whether you'd done -- checked  
17      other supporting documents or contradictory  
18      evidence that indicated that this was not  
19      true.

20              Q.       And so you're saying you  
21      checked the FDA documents that were cited in  
22      this e-mail --

23              A.       Correct.

24              Q.       -- as contradictory evidence?



1           A.       No. As either confirmatory or  
2       contradictory.

3           Q.       Which one was it?

4           A.       Confirmatory.

5           Q.       But you didn't provide those  
6       documents here?

7                   MS. CONROY: Objection.

8                   THE WITNESS: No, I just cited  
9       them in the context of -- they were in  
10      the document that was the basis of the  
11      opinion.

12          Q.       (BY MS. SAULINO) And you  
13      didn't explain how those documents were  
14      confirmatory of your opinion. Right?

15          A.       No, I didn't explain that, but  
16      there's a quote from the documents that's a  
17      correct quote in this e-mail.

18          Q.       In the e-mail that you're  
19      citing, there is a quote from one of the FDA  
20      documents? That's what you're saying?

21          A.       Correct.

22          Q.       Okay. That's not your quote.  
23      That's not something you pulled out; right?

24                   MS. CONROY: Objection.

1 THE WITNESS: That's correct.

2 It says it's an FDA quote.

3 Q. (BY MS. SAULINO) And you're  
4 aware, correct, Dr. Egilman, that the HDMA is  
5 a trade association?

6                    A.                    I am.

7 Q. And the HDMA doesn't actually  
8 sell anything?

9 A. Do you mean sell any product?

10 Q. Right.

11                   A.       That's correct.

12 Q. Okay.

13           A.       Are you done with this one?

14 Q. I am. Thank you.

15           A.       I've been accused of stealing  
16       exhibits before, so I just wanted to make  
17       sure I give them to the court reporter.

18 Q. I'm sure she appreciates it.  
19 Let's look at page 82 of your  
20 report.

21                    A.            Okay.

22 Okay.

1. **Identify the subject and the main idea of the text.**  
 2. **Summarize the text in your own words.**  
 3. **Identify the author's purpose and tone.**  
 4. **Identify the main supporting details and evidence.**  
 5. **Identify the author's bias or point of view.**  
 6. **Identify the author's use of rhetorical devices.**  
 7. **Identify the author's use of figurative language.**  
 8. **Identify the author's use of sensory details.**  
 9. **Identify the author's use of figurative language.**  
 10. **Identify the author's use of sensory details.**

[illegible]

[illegible]

[illegible]

[illegible]

23 If I could look at page 65 of  
24 your report, please. The top?

1           A.       Okay.

2           Q.       Do you see Opinion 7.21?

3           A.       I do.

4           Q.       And your opinion there is  
5       "Walgreens' solution to red flag stores was  
6       to find a distributor who would sell to them.  
7       All three Walgreens distributor facilities  
8       failed to implement SOM procedures"; right?

9           A.       Correct.

10          Q.       Okay. And then you refer to  
11       Exhibit B.21; right?

12          A.       Correct.

13          Q.       Okay. I have a copy if you  
14       would like it.

15          A.       Okay. I'll use yours.

16          Q.       Okay. I'm handing you what's  
17       been marked as Exhibit 11.

18                   (Whereupon, Deposition Exhibit  
19       Egilman 11, Opinion - WAG solution to  
20       red flagged stores was to find a  
21       distributor who would sell to them.  
22       All 3 WAG distributor facilities  
23       failed to implement SOM procedures,  
24       was marked for identification.)

1           Q.       (BY MS. SAULINO) And looking  
2 at Exhibit 11 --

3           A.       Okay.

4           Q.       -- it appears that you cite for  
5 this opinion one document; right?

6           A.       Correct.

7           Q.       And it is an e-mail that you  
8 have screenshotted onto the page; right?

9           A.       Correct.

10          Q.       Okay. And you provided some  
11 red arrows there; right?

12          A.       Correct.

13          Q.       You don't list any other  
14 documents; right?

15          A.       Not for this opinion -- not in  
16 this -- not in Opinion B.21, but there are a  
17 lot of other documents that relate to this  
18 issue in the other opinions.

19          Q.       Okay. You don't provide any  
20 cross-referencing of those other opinions;  
21 right?

22          A.       Correct. You'd have to read  
23 them.

24          Q.       You don't provide any way --



1       any roadmap that would tell us precisely  
2       which of your other 490 opinions we should be  
3       looking at; right?

4                   MS. CONROY:  Objection.

5                   THE WITNESS:  No.

6                   I think it's pretty clear when  
7       you look at the documents that they  
8       relate to the -- this situation  
9       between Walgreens, Jupiter, Cardinal,  
10      and ABC.  You know, there's a whole  
11      narrative there.

12                  Q.       (BY MS. SAULINO)  You don't  
13      write anywhere in this report or its attached  
14      exhibits what you believe is obvious about  
15      the situation you just described; right?

16                  A.       No.

17                  Q.       You don't provide any kind of  
18      roadmap to your initial hypotheses; right?

19                  MS. CONROY:  Objection.

20                  THE WITNESS:  That's true.

21                  Q.       (BY MS. SAULINO)  You don't  
22      provide the question that you were looking to  
23      answer; right?

24                  A.       That comes under the assignment

1 question generally, so that's -- that's where  
2 that question is.

3 Q. Well, you didn't provide the  
4 assignment question in your report either,  
5 did you?

6 A. That's correct.

7 Q. Okay.

8 You don't show us any  
9 re-evaluation from other data or documents in  
10 this opinion; right?

11 A. No. There are other documents  
12 that relate to this situation.

13 Q. But you don't list them here;  
14 right?

15 A. They're not listed in B.21, but  
16 they are otherwise in the report, including  
17 reference to Jupiter Walgreens.

18 I cite the Walgreens  
19 \$80 million payment for violating DEA rules  
20 on selling and a variety of other documents.

21 Q. You don't cite that here? In  
22 Exhibit B.21?

23 A. I do not cite those other  
24 opinions that relate to this opinion in this

1       agreement. That is correct.

2               Q.       Nowhere do you tell us that  
3       those other opinions relate to this opinion,  
4       explicitly in your report. Right?

5               A.       That's correct.

6               Q.       You don't cite any deposition  
7       testimony here; right?

8               A.       Correct.

9               Q.       Okay. And this single document  
10       that we're looking at right here, that you  
11       provide here, as support for your opinion,  
12       doesn't even mention anywhere in it SOM  
13       procedures; right?

14              A.       By name, correct.

15                      MS. SAULINO: Okay. We can go  
16       off the record.

17                      THE VIDEOGRAPHER: Off the  
18       record. 4:13.

19                      (Recess taken, 4:12 p.m. to  
20       4:25 p.m.)

21                      THE VIDEOGRAPHER: We are back  
22       on the record at 4:26.

23               Q.       (BY MS. SAULINO) Okay.

24       Dr. Egilman, a number of your opinions in

1       your report pertain to what you call "the  
2       venture."   Correct?

3               A.       Yes.

4               Q.       And on page 51 of your report,  
5       you define the venture at 4.4; right?

6               A.       Correct.

7               Q.       And you say, "As referred to  
8       herein, 'the venture' refers to all  
9       defendants in the opiate litigation,  
10      including their associated individuals and/or  
11      organizations acting in a concerted fashion  
12      separately or together to effect a particular  
13      objective"; right?

14              A.       Correct.

15              Q.       That's a definition that you  
16      came up with; right?

17              A.       I'm sure I discussed it with  
18      the lawyers.

19              Q.       Okay.   Do you remember when  
20      that was?

21              A.       Over the last two or three  
22      months.

23              Q.       And was that a definition that  
24      you came up with or that they gave you?

1           A.       It was a discussed definition  
2       between the two of us. I don't know -- I  
3       can't tell you which words came from whom.

4           Q.       Okay. So this definition is  
5       not something that was the result of your  
6       iterative process of research?

7           A.       Well, that's not necessarily  
8       true, no.

9           Q.       Well, you just said that it  
10      came from a discussion with the plaintiffs'  
11      lawyers; right?

12          A.       Yeah, but it also -- my part of  
13      that came from reading the documents and  
14      trying to figure out what had gone on.

15          Q.       Are discussions with  
16      plaintiffs' lawyers typically a part of your  
17      expert process?

18          A.       Certainly they are. Depends on  
19      what the issues are. For example, I was  
20      asking for depositions --

21          Q.       Okay.

22          A.       -- to be taken. I was asking  
23      for further discovery to be taken.

24          Q.       You've answered my question,

1       sir.  You said, "Certainly they are."

2               A.       Yeah, but I have to -- it's not  
3       everything.  It's limited to certain areas.

4               Q.       Okay.

5               A.       So it's just "Certainly they  
6       are" is a misleading little snippet.  Which I  
7       prefer not to leave on the record alone.

8               Q.       Well, sir, I asked you:  "Are  
9       discussions with plaintiffs' lawyers  
10       typically a part of your expert process?"

11               And your answer was, "Certainly  
12       they are.  Depends on what the issues are,"  
13       and then you started giving examples.

14               I don't think we need any  
15       further examples.  I understand your answer.  
16       Okay?

17               A.       No.  But go right ahead.

18               Q.       My next question for you,  
19       though, is --

20               A.       Just let my put on the record  
21       my answer is incomplete.  Now go ahead.

22               Q.       My question for you, sir, is  
23       your definition for "the venture," do you  
24       document anywhere here the iterative process

1       that you went through to come up with this  
2       definition?

3               A.       No.   And there's -- there's, I  
4       think there are at least three different  
5       times when I discussed the venture in the  
6       report, and it's expanded on in at least one  
7       of those times.

8               Q.       Okay.   So looking at the  
9       definitions that you provide on page 51, we  
10      can't rely on that definition?

11               MS. CONROY:   Objection.

12               THE WITNESS:   No, you can rely  
13      on that definition.   There's an  
14      expanded version of this definition --  
15      well, first of all, let me see  
16      Exhibit 473.   Maybe we're talking  
17      about the same thing.

18               Q.       (BY MS. SAULINO)   We will get  
19      to Exhibit 473.   I'm just looking at the  
20      definition that you put here in your report  
21      here, sir, under the section called  
22      "Definitions."

23               A.       Okay.   Well, hold on one  
24      second.

1 Q. I have a copy if you need it.

2 A. Sure.

3 Q. I've handed you Exhibit 12 to  
4 your deposition, Dr. Egilman.

5 (Whereupon, Deposition Exhibit  
6 Egilman 12, Definition - "Venture"  
7 refers to all defendants (including  
8 their associated individuals and/or  
9 organizations) and covers all aspects  
10 of marketing, distribution, and supply  
11 they engaged in, was marked for  
12 identification.)

13 THE WITNESS: Right. So this  
14 is exactly what I was referring to.  
15 This is -- the opinion's not limited  
16 to the definition in 4.4, but there's  
17 an expanded basis for the opinion  
18 which elaborates more -- elaborates on  
19 what that means.

20 Q. (BY MS. SAULINO) I see that,  
21 sir.

22 This does not provide us any  
23 information about how you came to the  
24 opinion; correct?



1           A.       You mean came to the  
2       definition? Or the opinion?

3                    It's not an opinion; it's a  
4       definition.

5           Q.       Okay. Actually, sir, it is  
6       both. If you look at page 133 of your report  
7       at 7.473?

8           A.       What page?  
9                    What page?

10          Q.       133.

11          A.       Okay. Where?

12          Q.       I'm looking at 7.473, which  
13       also refers to Exhibit B.473, which is the  
14       exhibit that we're looking at right now which  
15       is Exhibit 12 to your deposition.

16          A.       This is a different issue.

17          Q.       Okay.

18          A.       This is -- this is called  
19       "Opinion definitions." It's really a  
20       definition. I mean, so you could call that  
21       an error or a typo.

22                    This should be "Definition."

23          Q.       Well, it's listed in your  
24       Opinions section as 473, right?

1           A.       Yeah, it's listed as 473 as an  
2       opinion, but if you'll look at the actual  
3       opinion, it's listed as a definition.

4           Q.       Okay. So this is not an  
5       opinion?

6           A.       It's a definition. If you want  
7       to call it an opinion, I'm not offended.

8           Q.       Sir, I'm looking at what you  
9       put in your report, which says that it was an  
10      opinion, and it's in the opinion section, and  
11      it cites the very same document that is cited  
12      in the "Definitions" section.

13          A.       Well, the same document is --  
14      has two different headings to it. In the  
15      summary of opinions, it's listed as an  
16      opinion. But if you look at 473, the word  
17      "opinion" doesn't appear. Okay? Whereas  
18      most of my opinions actually have the word  
19      "opinion." Here, it calls it -- it says  
20      "Definition."

21                    So I would say that what you  
22      see on 133, the word "opinion" -- I mean, it  
23      doesn't really matter, to tell you the truth.  
24      You can call it an opinion. You can call it

1 a definition. Because the definition is  
2 probably an opinion. But it's definitely --  
3 I meant it to frame what I was referring to  
4 when I used the word "venture."

5 Q. Okay. Well, as you noted,  
6 these two definitions on page 133 and on  
7 page 51 actually say different things; right?

8 A. Not really. I mean, because  
9 one says "Opinion-Definition" and the other  
10 says "Definition" without "Opinion."

11 Q. I'm referring to what happens  
12 after the word "Definition."

13 A. Yeah, there's a modifying  
14 sentence in 473 that doesn't appear in --  
15 that appears in 473 that was not typed into  
16 the same opinion when it was typed that  
17 appears on page 133.

18 Q. Did you do that typing  
19 yourself, sir?

20 A. I don't think I did that  
21 typing.

22 Q. Who did?

23 A. I don't know. Probably one of  
24 my staff did the typing.

1           Q.       Okay. And so you're saying now  
2       that you did not intend 7.473 to be an  
3       opinion in your report?

4           A.       No, I intended 473 to be what  
5       473 says.

6           Q.       Which is a definition?

7           A.       Which is a definition.

8                    I also intended 473, the  
9       summary of 473 to be identical to the actual  
10      opinion -- the actual definition 473, so  
11      what's in this summary of opinions is missing  
12      the last sentence.

13          Q.       Okay.

14                   And then under -- and then you  
15      provide a basis; right? For the definition?

16          A.       Correct.

17          Q.       Okay. And the basis for the  
18      definition is -- you provide two sentences,  
19      and then the second sentence has an A, B, and  
20      C; right?

21          A.       Correct.

22          Q.       Okay. You don't cite any  
23      documents; right?

24          A.       Not in this definition,

1 correct.

2 Q. Well, not in -- not on page 51  
3 in the "Definitions" sections; right?

4 A. Correct.

5 Q. Well, except for Exhibit B.473.

6 A. Correct.

7 Q. And not on page 132 under  
8 opinion -- I'm sorry, and not on page 133,  
9 under Opinion 7.473; right?

10 A. Correct.

11 Q. Except for Exhibit B.473;  
12 right?

13 A. Correct.

14 Q. And then if we look at  
15 Exhibit B.473, there are no documents cited  
16 here either; right?

17 A. Correct.

18 Q. Okay. You also don't cite to  
19 any deposition testimony; right?

20 A. Correct.

21 Q. You also don't cite to any  
22 literature; right?

23 A. Not here.

24 Q. Right. You don't cite to any

1 literature here, right?

2 A. Not in this opinion, not in  
3 473. There's other literature cited to that  
4 describes the same activity by Saper.  
5 Saper's speech.

6 Q. Okay.

7 A. He didn't call it a venture.  
8 He called it a narco pharma.

9 Q. Okay. And you don't link that  
10 citation to this definition; right?

11 A. I didn't use "narco pharma."

12 Q. So you don't link that citation  
13 to this definition in your report; right?

14 A. Correct. But he describes the  
15 same activities in his 2008-2009 talk, where  
16 he calls what I call the venture, narco  
17 pharma.

18 Q. So you don't provide anywhere  
19 in either of the places where you cite the  
20 definition nor in Exhibit B.473, anywhere to  
21 look to see how you came to the conclusion  
22 that this was the definition for venture;  
23 right?

24 A. No, it's my definition for

1 venture.

2 Q. Well, it's yours and the  
3 plaintiffs' lawyers; right?

4 A. Yeah, they agreed with this  
5 definition of venture.

6 Q. And if they had disagreed, you  
7 would have changed it?

8 A. No. You don't know me very  
9 well.

10 Q. Well, you told me just a couple  
11 of minutes ago that this was a definition  
12 that was created in combination with them;  
13 right?

14 A. In conversation with them, but  
15 if they disagreed with something that I  
16 thought should be here, I wouldn't change it.

17 MS. SAULINO: Whoever is on the  
18 phone, can you mute, please?

19 Q. (BY MS. SAULINO) Well, now,  
20 let's look at --

21 A. Are you done with this one?

22 Q. For now, but don't give it  
23 away. Keep it nearby.

24 MS. SAULINO: And, Debbie,

1       we're out of stickers.

2               Q.       (BY MS. SAULINO)   If you could  
3       look at page 135 of your report.

4               A.       Sure.

5               Q.       The very last opinion on that  
6       page.

7               A.       Yeah.

8               Q.       Are you there?

9               A.       I just want to -- these --  
10       these things are all being named Egilman?  
11       All of these exhibits?

12                      MS. SAULINO:   Oh, I hadn't  
13       noticed that.

14                      THE WITNESS:   Yeah, I did  
15       notice that.  Is that how you want it  
16       to be?

17                      MS. SAULINO:   We probably  
18       should correct it to just Egilman.

19                      THE WITNESS:   That would be my  
20       thought, but I'm not thinking here.

21                      MS. SAULINO:   Okay.  Well,  
22       thank you for that.

23                      (Discussion off the record.)

24                      MS. SAULINO:   Thank you.  We'll



1 discuss it with the court reporter at  
2 the next break and we'll work it out.  
3 Thank you.

4 THE WITNESS: No problem.  
5 Sorry to interrupt.

6 Q. (BY MS. SAULINO) So last  
7 opinion on page 135. 7.488.

8 "Opinion, these are the members  
9 of the venture." Do you see that?

10 A. Correct.

11 Q. Okay. I have a copy of  
12 Exhibit B.488. If you'd like it.

13 A. Right. You've got to include  
14 489, because that also includes additional  
15 members of the venture.

16 Q. Well, you don't cross-reference  
17 those two --

18 A. No, they're just sequential.

19 Q. Okay. But you told me earlier  
20 that they weren't necessarily sequential when  
21 they went together; right?

22 A. They aren't. In this case  
23 they're sequential.

24 Q. And so there was no way for us

1 to know that those two were supposed to be  
2 read together except that they were  
3 sequential?

4 A. No.

5 Q. You don't say anywhere in your  
6 report that those two opinions are supposed  
7 to be read together; right?

8 A. Explicitly in those words? No.

9 Q. Okay.  
10 Well, let's look at 4.88 first.  
11 Do you want it or do you have  
12 your own copy?

13 A. I don't think it matters. I'll  
14 have this one.

15 Q. Okay.

16 MS. SAULINO: It's marked as  
17 Exhibit 14.

18 (Whereupon, Deposition Exhibit  
19 Egilman 14, Opinion - these are the  
20 members on the "venture" with two  
21 Redweld folders", was marked for  
22 identification.)

23 MS. SAULINO: I think we  
24 realized that we were missing a 13.

1 THE WITNESS: 13 is always good  
2 to be left out.

3 Q. (BY MS. SAULINO) If you look  
4 at Exhibit 4.88 under "Basis," you provide a  
5 spreadsheet with colors; right?

6 A. Correct.

7 Q. And it is four pages long and  
8 then you provide some citations on page 5;  
9 right?

10 A. Right.

11 Q. Okay. So these are the members  
12 of the venture; is that right?

13 A. Across the top.

14 Q. Across the top of what?

15 A. Across the top. Name, type.  
16 The companies across the top are the members  
17 of the venture. And they were also in red.

18 Q. And where do you explain that  
19 in your report or in this exhibit?

20 A. I don't.

21 Q. So there was --

22 A. Except elsewhere where I name  
23 the defendants in the case as the members of  
24 the venture.

1                   So it's -- they're here, by the  
2                   same name that they're in the case.

3                   Q.       Do you believe that these are  
4                   the only defendants in the case?

5                   A.       No. They're also in 489.

6                   Q.       Okay. So when you say, in  
7                   Opinion 4.88, "These are the members of the  
8                   venture," you don't actually mean that?

9                   A.       No, I mean it. You've got  
10                  names across the top, and then you've got in  
11                  red. And what I said explicitly elsewhere  
12                  is -- and we've read that already -- that the  
13                  defendants in the case -- we read that  
14                  several times during this deposition -- are  
15                  members of the venture.

16                  Q.       Well, I understand that you say  
17                  different things in different places about  
18                  who makes up the venture, Dr. Egilman, which  
19                  is why I'm asking you these questions,  
20                  because it's unclear to me from your report  
21                  who makes up the venture.

22                  A.       Okay. Do you want to ask that  
23                  question?

24                  Q.       From looking at Document 7.488,

1       when you say, "These are the members of the  
2       venture," you're now telling me that this is  
3       not -- that that opinion is incomplete?

4               A.       Well, I said you had to  
5       conclude -- you had to include 4.89, for one  
6       thing.

7               Q.       All right.

8               A.       And I've already said elsewhere  
9       that the members of the venture were the  
10      manufacturers and distributors in the case.

11              Q.       But you don't say that in  
12      Opinion 7.488; right?

13              A.       I don't say that in  
14      Opinion 4.88 explicitly, that's right.

15              Q.       But you don't say it  
16      explicitly, nor do you say it implicitly,  
17      sir; right? You say "These are the members  
18      of the venture," not "These are some of the  
19      members of the venture"; right?

20              A.       That's correct.

21              Q.       Okay.

22              A.       That one should have been  
23      clear.

24                      This had a different purpose

1 originally, this document.

2 Q. All right. Dr. Egilman, I'm  
3 trying to get you Exhibit 489. We seem not  
4 to have it in our little box here.

5 A. Do you want me to see if I have  
6 it in my box?

7 Q. Oh, it is in the binder that is  
8 Exhibit 1. And there may be other copies  
9 your counsel have. But I won't be able to  
10 provide Ms. Conroy a copy from me.

11 MS. SAULINO: Okay. Let's go  
12 off the record for about a minute.

13 THE VIDEOGRAPHER: Off the  
14 record. 4:46.

15 (Recess taken, 4:45 p.m. to  
16 4:47 p.m.)

17 THE VIDEOGRAPHER: Back on the  
18 record at 4:48.

19 Q. (BY MS. SAULINO) Okay.  
20 Dr. Egilman, I'm going to give you an exhibit  
21 sticker, or I can put it on if you'd like.

22 So we're marking as Exhibit 15,  
23 Exhibit 4.89 to your report?

24 (Whereupon, Deposition Exhibit

1           Egilman 15, Opinion B.489 Redweld  
2           folder, was marked for  
3           identification.)

4           Q.       (BY MS. SAULINO) Which is --

5           A.       4.89 is actually this and that.

6           Q.       I'm sorry, when you say "this  
7           and that," I have one page that is 4.89.  
8           That was what was produced to us. You have  
9           something else?

10          A.       Yeah. I think you were  
11          supplied all these underlying documents.

12                 MS. CONROY: I don't think the  
13          notebooks have all of the underlying  
14          documents.

15                 THE WITNESS: You don't have  
16          the underlying documents. You weren't  
17          given all of this.

18          Q.       (BY MS. SAULINO) Dr. Egilman,  
19          I'm just looking at the one page that we've  
20          marked as Exhibit 15. I want to work through  
21          this, so let me figure this out.

22                 So Exhibit 15 in front of you  
23          is one page; right?

24          A.       Yeah, that's correct.

1           Q.       So -- and you'd agree with me  
2       that there are no documents cited here;  
3       right?

4           A.       That's correct. They were  
5       provided separately as attached to  
6       Exhibit 15.

7           Q.       But that's not indicated  
8       anywhere here on --

9           A.       They were provided with the  
10      opinion, digitally.

11                 MS. CONROY: They're attached  
12      electronically to the document.

13          Q.       (BY MS. SAULINO) So it's your  
14      testimony that there were supposed to be  
15      documents that went along with opinion 4.89,  
16      Exhibit B.489?

17          A.       Yeah. All of these.

18          Q.       But that they're not cited on  
19      the page that is the basis for your opinion?

20          A.       Well, that's the index,  
21      basically, to these documents.

22          Q.       I see what you're saying, sir,  
23      but I'm trying to figure out what you relied  
24      on here. Because we didn't have those



1 documents as being associated with your  
2 opinion.

3 MS. CONROY: Objection.

4 THE WITNESS: Well, I don't  
5 know that that's the case or not.

6 Q. (BY MS. SAULINO) Okay.

7 A. I'm telling you that the way  
8 the report was delivered by me, it included  
9 the documents in my hands.

10 Q. All right. Can I see those  
11 documents?

12 A. Sure.

13 Q. Can I have the little Redweld  
14 so I don't --

15 A. Sure.

16 Q. All right. So let's make  
17 Exhibit 15 to your deposition what you are  
18 calling Exhibit 4.89, which is the one  
19 page -- I think it's in that blue folder.

20 A. Right.

21 Q. Okay. Which is the one page  
22 that you're calling an index, plus the  
23 Redweld that you're saying is the backup?

24 We'll make that all Exhibit 15

1 to your deposition.

2 A. Sure.

3 Q. Okay.

4 A. Do you want to put the sticker  
5 on the folder?

6 Q. Yeah. That's what I'm going to  
7 do.

8 Okay. And your Opinion 4.89 is  
9 "Members of the venture entered agreements  
10 with the DEA and DOJ for violating the law";  
11 right?

12 A. Correct.

13 Q. And you say that -- you say now  
14 that this opinion was supposed to be read in  
15 combination with Opinion 4.88 as comprising  
16 all of the members of the venture?

17 A. Yes.

18 Q. Okay. But, again, the Redweld  
19 that you just handed me still doesn't tell us  
20 that, does it?

21 MS. CONROY: Objection.

22 THE WITNESS: This says

23 "Members of the venture entered

24 agreements with the DEA and DOJ for

1           violating the law," so I think it does  
2           say that.

3           Q.       (BY MS. SAULINO) Well, I agree  
4           that you read what the opinion says, but it  
5           doesn't say that it should be read together  
6           with 4.88 to comprise the members of the  
7           venture; right?

8           A.       That's correct.

9           Q.       Okay.  
10                  Now, do you still have B.473  
11           that I asked you to hang on to?

12                  I believe it's Exhibit 12.

13           A.       Yes, I do.

14           Q.       Okay.  
15                  Exhibit 12 to your deposition?

16           A.       Yes.

17           Q.       So I'm still trying to figure  
18           out what the basis is for your determining  
19           who made up the venture other than the words  
20           that you use here on Exhibit 12.

21                  You don't cite any documents in  
22           Exhibit 12, as we've already agreed; right?

23           A.       That's correct.

24           Q.       Okay. We've already agreed you

1       don't cite any kind of evidence; right?

2               A.       For the definition.   Correct.

3               Q.       Okay.

4                       And so there's no way for us to  
5       reconstruct from your written opinion or the  
6       exhibits to your written opinion how you came  
7       to determine who the members of the venture  
8       were; right?

9               A.       No.

10              Q.       There is a way for us to  
11       reconstruct that?

12              A.       Yes.

13              Q.       From your written materials?

14              A.       Yes.

15              Q.       And what is that method?

16              A.       Well, first I named them  
17       "Members of the venture."   And then if you  
18       want to know how they got to be members of  
19       the venture, you look at the definition.  
20       They relied on each other's lies about  
21       addiction and treating mild pain to push the  
22       drugs.   They worked together to influence  
23       public perceptions of the class of narcotic  
24       drugs with respect to drug toxicity, quote

1 untreated pain, closed quote, and they  
2 encouraged the use of narcotics instead of  
3 non-medication treatments or less addictive  
4 drugs.

5 So that -- that's the main  
6 activities.

7 Now, you know, elsewhere, I --

8 Q. So I think --

9 A. I think elsewhere --

10 Q. I think we're good there, sir.

11 So you started with saying,  
12 "First, I named the members of the venture."  
13 And as we've just seen, you named them  
14 differently in different places; right?

15 A. I'm just saying my answer is  
16 incomplete. Now go ahead.

17 Q. You named them differently in  
18 different places; right?

19 A. That's correct.

20 Q. And here, the basis that you  
21 just read to us doesn't have any citation of  
22 any kind of support; right?

23 A. The basis for the definition  
24 doesn't have any cites.

1 Q. So there are no --

2 A. But the -- but there are lots  
3 of citations, examples, et cetera, for how  
4 various members of the venture met the  
5 definition I laid out here.

6 Q. Well, I realize that you are  
7 testifying to that, sir, but there's no way  
8 for us to see how you came to that conclusion  
9 by looking at the definition of the venture  
10 presented in B.473; right?

11 A. Wrong.

12 Q. And why do you say that's  
13 wrong?

14 A. Well, because we could start  
15 with B7. If you look at B7 --

16 Q. Sir, my question was about  
17 B.473.

18 A. You asked, "Why do you say  
19 that's wrong?" Okay? That's a wide  
20 question. That is not a yes-or-no question,  
21 as far as I can determine it.

22 Q. Respectfully --

23 A. I cannot answer that question  
24 "yes" or "no."

1 Q. Respectfully, sir --

2 A. If I cannot answer the  
3 question, then no problem. So I have no  
4 answer that's not -- because it's not a  
5 yes-or-no question. I can't answer the  
6 question. Go ahead.

7 Q. Respectfully, sir, my question  
8 was: "There's no way for us to see how you  
9 came to that conclusion by looking at the  
10 definition of venture presented in B.473;  
11 right?"

12 And your answer to that was  
13 "Wrong."

14 We were looking at B.473 --

15 A. Well, now you have like four  
16 questions above.

17 Q. Looking at --

18 A. Go ahead.

19 Q. Looking at --

20 A. Start again.

21 Q. Looking at B.473 --

22 A. Right.

23 Q. -- there's no way for us to  
24 know how you came to the conclusions listed

1 in B.473 by looking at the definition of the  
2 venture presented in B.473; right?

3 MS. CONROY: Objection.

4 THE WITNESS: There's no  
5 conclusions in B.473, so I don't  
6 understand the question.

7 Q. (BY MS. SAULINO) Okay. And  
8 what you said just prior to that is "There  
9 are lots of citations, examples, et cetera  
10 for how various members of the venture met  
11 the definition I laid out here."

12 But we don't see those  
13 citations, examples, et cetera, listed in  
14 your definitions for venture where they  
15 appear in your report; right?

16 A. You don't see those examples in  
17 4.73? Correct.

18 Q. Or 4.88?

19 A. Or --

20 Well, no, 4.88's got examples.  
21 Okay?

22 4.88's got examples. It has a  
23 Redweld folder full of legal violations where  
24 the members of the venture paid fines for



1       violating the law.

2               Q.       Respectfully, sir, that was  
3       4.89, but --

4               A.       Oh, I'm sorry.

5               Q.       -- I take your point.

6               A.       4.89. Sorry.

7               Q.       Sitting here today, can you  
8       name each member of the venture?

9               A.       Not without looking at the  
10       notes, without making a mistake, no.

11                       Maybe I can. Let me see. I  
12       had two card stocks.

13              Q.       What are you looking at right  
14       now?

15              A.       Looking at the members of the  
16       venture.

17              Q.       I'm just asking you whether,  
18       without looking at your notes and other lists  
19       that you have there, whether you can name the  
20       members of the venture. It's a yes-or-no  
21       question.

22              A.       Do you mean as a closed -- as a  
23       closed-book test?

24                       Maybe I can, maybe I can't. I

1       don't know. But I'm not going to guess.

2               Q.       All right. So looking back at  
3       B.473, which is Exhibit 12, number 1, you  
4       say, "They relied on each other's lies about  
5       addiction and treating mild pain to push the  
6       drugs."

7               A.       Correct.

8               Q.       That's a conclusion; right?

9               A.       No, that's not a conclusion.  
10       That's how you qualify for the membership.

11              Q.       And you don't provide any way  
12       for us to know how you came to that  
13       conclusion that that is how you qualify for  
14       membership; right?

15              A.       I do not explain why that is  
16       part of the definition for venture, that's  
17       correct. But I do provide examples or  
18       evidence that the venture lied about  
19       addiction and treating mild pain to push the  
20       drugs. That's what the whole report is  
21       about, more or less.

22              Q.       You don't lay out here any way  
23       for the defendants to pick up your report,  
24       take your definition, reconstruct the work

1       that got you to your conclusion; right?

2               A.       Wrong.

3               Q.       You don't explicitly in writing  
4       provide any way to do that, do you?

5               A.       No, that's not exactly true  
6       either. I gave you the methodology. If you  
7       look at the grounded method, there's the  
8       methodology there, there's the beginning of  
9       search terms. You could then do the same  
10      iterative process I did.

11              Q.       Absolutely, sir. You and I  
12      have talked at length today about the  
13      processes that you used and how you didn't  
14      document many steps of those processes;  
15      right?

16              A.       Right.

17              Q.       Okay.

18                      So there's no way for us to  
19      pick up your report and recreate what brought  
20      you to this conclusion.

21              A.       Well, it's an iterative  
22      process. It's never going to be the same.

23                      We do it two or three times,  
24      and there will be certainly minor differences

1       in what search terms you come up with and  
2       what you pursue.

3                       So you know, there's -- there's  
4       no way to have a -- you can reproduce the  
5       method. You can reproduce the search terms,  
6       and you can then look at the documents and  
7       then do other iterative searches.

8               Q.       By my count, more than a third  
9       of your 489 or 490 opinions pertain to the  
10      venture. Do you have any reason to disagree  
11      with that?

12              A.       No reason to agree or disagree.

13              Q.       Is it your view that each and  
14      every one of the opinions that is cited for  
15      the venture applies to each and every  
16      defendant in the opiate MDL?

17              A.       I'm not sure.

18                      In the aggregate, yes. I don't  
19      know about each --

20                      Well, here's a situation.  
21      Depends how you define "applied to."

22                      I can give you a definition  
23      where I think the answer would be yes, and if  
24      that's the definition you accept, the answer

1 is yes.

2 Q. Why don't we start with my  
3 first question. Is it your view that each  
4 and every one of the opinions that is cited  
5 for the venture applies to each and every  
6 defendant in the opiate MDL?

7 A. Based on my understanding of  
8 membership in the venture, participation in  
9 the venture, yes.

10 Q. So if we look at any one  
11 opinion about the venture, we should be able  
12 to find support for every defendant in the  
13 opiate MDL for that opinion?

14 A. Oh, no. Not necessarily.  
15 That's not how it works.

16 Q. Well, so how is there any way  
17 for us to understand how you applied that  
18 opinion to every member of the venture?

19 A. Works like a bank robbery. One  
20 person -- or a series -- a bank robbery  
21 network.

22 So you have lots of different  
23 people. You have the guy outside watching.  
24 You've got the guy inside with the gun.

1     You've got the teller who may be complicit.  
2     You've got the guys in the car, the getaway  
3     car, and you've got some people looking out  
4     for the cops. Okay?

5                     So they're all 100 percent  
6     responsible for robbing that bank. And in  
7     this case, that means destroying these  
8     communities, costing them misery and some  
9     money.

10                    And then it goes forward and  
11    back. So in other words, that bank -- that  
12    group of bank robbers, okay? One of those  
13    guys was robbing banks since 1984, okay?

14                    But the other bank robbers  
15    joined 1996, 1997. Once they agree to the  
16    same purpose of continuing to rob banks,  
17    they're also responsible for the bank  
18    robberies that go back to 1994. And the same  
19    thing going forward.

20                    So by that definition of  
21    concerted action, they're all participants.  
22    They all don't have to hold a gun to the  
23    teller's head. They didn't all have to be  
24    the guard. They're all 100 percent

1 responsible.

2 Q. The definition of concerted  
3 action that you just laid out in your  
4 testimony is not stated anywhere in your  
5 report, is it?

6 A. Correct.

7 Q. And you haven't provided  
8 anywhere in your report your basis for  
9 believing that that definition applies to the  
10 defendants in the opiate MDL; right?

11 A. That's correct.

12 Q. I'd like to look at some of  
13 your venture opinions.

14 Let's look at Opinion 81 which  
15 is on page 75 of your report.

16 A. Why don't you wait a second  
17 while he yanks the whole opinion.

18 Q. Well, I can give you a copy of  
19 the whole exhibit.

20 A. Yeah. But the exhibit books  
21 have got --

22 Q. This is the exhibit. It's one  
23 page. Would you like it?

24 A. I don't think so.

1 MS. CONROY: Objection.

2 THE WITNESS: But we'll see.

3 Okay. You're correct.

4 Q. (BY MS. SAULINO) What made you  
5 think that this exhibit should be more than  
6 one page, Dr. Egilman?

7 A. First, it's two pages.

8 Q. I was only given one page,  
9 Dr. Egilman, so could I see what you have?

10 A. Sure.

11 Q. I'm looking at what was  
12 produced to us two days ago.

13 A. Well, I'm looking at my opinion  
14 that should have been produced to you.

15 Q. Right. Okay. What you have  
16 here, Dr. Egilman, the second page that you  
17 have here is what was originally produced to  
18 us which was cut off. And so the first page  
19 is what was reproduced to us. Both were  
20 represented to be the same document.

21 Is that your understanding?

22 A. I don't have any understanding  
23 about that.

24 Q. Okay. Well, looking at



1 Exhibit B.81, is that the basis for your  
2 opinion, "The venture should have known that  
3 higher doses kill and warned about this"?

4 A. Correct.

5 Q. Okay. And let's mark that as  
6 Exhibit 16 to your deposition.

7 (Whereupon, Deposition Exhibit  
8 Egilman 16, The "venture" should have  
9 known that higher doses kill and  
10 warned about this, was marked for  
11 identification.)

12 Q. (BY MS. SAULINO) You can mark  
13 both pages. And so as I just explained, the  
14 first page was what was reproduced to us.  
15 The second page is what we originally got,  
16 which was cut off.

17 It's my understanding those  
18 were supposed to be the same.

19 A. Yes. Okay. I'm not fighting.

20 Q. Okay. So what we have here as  
21 the basis for Opinion 81, first, let's look  
22 at what Opinion 81 is, and that is "The  
23 venture should have known that higher doses  
24 kill and warned about this"; right?

1           A.       Right.

2           Q.       And here you have a screenshot  
3 of the first page of an article; right?

4           A.       Correct.

5           Q.       And that's all you provide as  
6 the basis for this opinion. Right?

7           A.       Correct.

8           Q.       Okay. You don't actually  
9 attach the full article; right?

10          A.       That's apparently correct.

11          Q.       Okay. And your opinion here,  
12 the way that you have phrased it said "The  
13 venture should have known that higher doses  
14 kill and warned about this"; right?

15          A.       Correct.

16          Q.       You don't give a date at which  
17 they should have known; right?

18          A.       No. This is known for a long  
19 period of time.

20          Q.       Okay.

21          A.       This is -- I mean, this is  
22 known since, you know, probably 3500 in the  
23 Greek scrolls, in the Greek, you know,  
24 writing.

1           Q.       You would agree with me,  
2       Dr. Egilman, that the bottom of the first  
3       page of this article is cut off; right?

4           A.       Correct.

5           Q.       Okay. Would you have any  
6       reason to doubt me if I told you that this  
7       article that you screenshotted here was  
8       published in 2016?

9           A.       No.

10          Q.       And that is the only basis that  
11       you provide for Opinion 81?

12          A.       That's the only basis listed in  
13       this opinion.

14          Q.       And you don't --

15          A.       This is -- I mean, this is just  
16       documenting in numbers what's been known  
17       forever.

18          Q.       Well, you don't provide any  
19       detail about what you believe has been known  
20       forever here in Opinion 81; right?

21          A.       That's correct.

22          Q.       You don't provide any roadmap  
23       to where we should look to find what you  
24       believe has been known forever; right?

1                   A.       That's correct.

2                   Q.       You don't provide any original  
3       hypothesis that you used in order to come to  
4       this opinion; right?

5                   A.       Correct.

6                   Q.       You don't provide us any  
7       roadmap of how you tested that hypothesis;  
8       right?

9                   A.       Correct.

10                  Q.       You don't cite to any  
11       deposition testimony that discusses this  
12       opinion; right?

13                  A.       That's correct.

14                  Q.       So other than this screenshot  
15       of the first page of an article from 2016, we  
16       have nothing written in your report that  
17       shows us how you came to the opinion in  
18       Opinion 81?

19                  A.       That's correct.

20                  Q.       All right.

21                           All right.   So let's look at  
22       Opinion No. 8, which is at page 63 of your  
23       report.

24                           Do you have your report?

1           A.       I have the index to the report.

2           Q.       I'm sorry?

3           A.       I have the index to the report.

4           Q.       What do you mean, sir?

5           A.       Well, you keep referring to  
6       this as "the report." I think this is -- the  
7       report is 35, 400 pages, I think. So as  
8       we've been going through things, you can see  
9       this is not the entire report.

10          Q.       So what you are looking at in  
11       front of you -- I just want to make sure on  
12       the record we have -- so what's it been  
13       marked as for your deposition?

14          A.       It's been marked as "Report of  
15       David S. Egilman, M.D. MPH."

16          Q.       For your deposition, sir.  
17       Exhibit 1F?

18          A.       Exhibit 1F.

19          Q.       So Exhibit 1F, which you were  
20       handed this morning --

21          A.       Right.

22          Q.       -- which is named on the title  
23       page "Report of David S. Egilman, M.D. MPH."

24          A.       Right.

1           Q.       You're telling me that that's  
2       not a report. That's just an index?

3           A.       This is the -- this is the  
4       beginning of a report that's 3,200,  
5       3,300 pages; correct. With all the  
6       associated documents which have even more  
7       pages.

8                   That's the whole report. Do  
9       you see that? All these boxes? That's the  
10      report. That's what was shipped to you.

11          Q.       Actually, sir, nothing was  
12      shipped to us.

13          A.       That was what was digitally  
14      transmitted to you.

15          Q.       I understand what you're trying  
16      to say here. Is there any way that we would  
17      know from looking at this document that is  
18      titled "Report of David S. Egilman," that  
19      this is not actually your report?

20                   MS. CONROY: Objection.

21                   THE WITNESS: It's part of the  
22      report. Do you want the whole report?

23                   Well, one way would be to say  
24      oh, there's all these exhibits listed.

1                   Okay? In there.

2                   And so those are obviously --

3                   I'm sorry.

4                   MS. SAULINO: We need to take a  
5 time out.

6                   THE VIDEOGRAPHER: Off the  
7 record. 5:12.

8                   (Recess taken, 5:11 p.m. to  
9 5:17 p.m.)

10                  THE VIDEOGRAPHER: We're back  
11 on the record at 5:18.

12                  THE WITNESS: Do you want me to  
13 keep going with the answer?

14                  MS. SAULINO: Do you remember  
15 where you were?

16                  THE WITNESS: I think so.

17                  MS. SAULINO: Okay. Well --

18                  THE WITNESS: The question was  
19 how would someone know that this was  
20 not the entire report?

21                  The answer that I gave already  
22 was well, there's exhibit numbers  
23 attached under -- cited in each of the  
24 opinions. So you'd know there'd be

1           that. And that's number one reason.

2                       Number 2A is, I think that's  
3           how it was transmitted digitally,  
4           although I didn't do the transmission.

5           Q.       (BY MS. SAULINO) Okay. So I  
6           just want to clarify, Dr. Egilman. You've  
7           referred to this document that we have marked  
8           as Exhibit 1F to your deposition as the index  
9           to your report.

10                   And I'm trying --

11           A.       It's the introduction and index  
12           to the opinions.

13           Q.       And so then we need to add  
14           everything in B1 through 4.89, Exhibits B1  
15           through 4.89.

16           A.       And the attached documents  
17           which were also submitted, that in many cases  
18           are supplemental to the few pages that are in  
19           the "opinion" opinion.

20           Q.       Okay.

21           A.       Like we went through on that  
22           Exhibit 15 that's marked here.

23           Q.       I'm following you.

24                   And so if we look at what



1       you're now calling the index to your  
2       opinions, we see the name of the opinion, and  
3       then we go to the exhibit that matches that  
4       number, and we see the support for the  
5       opinion; right?

6               A.       Well, first, I don't agree with  
7       the predicate.

8               Q.       I'm sorry, which predicate?

9               A.       What you're now calling the  
10       index to your opinions.

11              Q.       Dr. Egilman, that was something  
12       you said just before the break.

13              A.       And I just corrected it and  
14       said it's the introductory materials and the  
15       index.

16                      And so -- next question.

17              Q.       Your report is the opinions  
18       that you list in Deposition Exhibit 1F plus  
19       all of the exhibits in Exhibit B1 through  
20       4.89 and their attached documents. That's  
21       your report?

22              A.       No.

23              Q.       What else is a part of your  
24       report?

1           A.       The methodology sections and  
2       the other sections in Exhibit 1F.

3           Q.       Right. Those are already in  
4       1F; right?

5           A.       Yeah, but you didn't say it  
6       that way. When you gave your question, you  
7       limited it to things called opinions. And I  
8       wanted to make sure that the record was clear  
9       that it was everything in 1F.

10          Q.       I appreciate that, Dr. Egilman.  
11                   Is there anything else that you  
12       consider to be part of your report that is  
13       not Exhibit 1F or all of the exhibits  
14       attached to Exhibit B and their attached  
15       documents?

16          A.       No.

17          Q.       Okay. Let's look at page 63,  
18       Opinion 7.8.

19          A.       Okay.

20          Q.       Opinion 7.8 is "All for one and  
21       one for all. The venture knew collective  
22       marketing increased the size of the opioid  
23       pie. Similarly, had any venture member  
24       broken ranks, the opioid market would have

1       slowed or if the complete truth was told, no  
2       efficacy and high addiction risk, the market  
3       would have crashed."

4                       Right?

5           A.       Yes.

6           Q.       You wrote that opinion?

7           A.       I did.

8           Q.       Before we even get to  
9       Exhibit B8, you hold the opinion that opioids  
10      have no efficacy?

11          A.       No efficacy for chronic  
12      non-malignant pain.

13          Q.       I see. You don't say that  
14      here, though; right?

15          A.       I left that part out.

16          Q.       All right. Now let's look at  
17      Exhibit B8. I have a copy here if you need  
18      it.

19                    Do you want --

20                    Okay. I didn't know if you  
21      wanted to use your own copy.

22                    THE WITNESS: Jayne, do you  
23      want to see if I've got marks on mine.

24          Q.       (BY MS. SAULINO) So I'm

1 marking this as Exhibit 17 to your --

2 MS. SAULINO: There's a  
3 different version?

4 MS. CONROY: There's an arrow  
5 on this one.

6 (Whereupon, Deposition Exhibit  
7 Egilman 17, All for one and one for  
8 all - the "venture" knew collective  
9 marketing increased the size of the  
10 opioid pie. Similarly had any  
11 "venture" member broken ranks, the  
12 opioid market would have slowed or if  
13 the complete truth was told (no  
14 efficacy and high addiction risk) the  
15 market would have crashed, was marked  
16 for identification.)

17 Q. (BY MS. SAULINO) Okay. So  
18 I've marked as Exhibit 17 to your deposition,  
19 our copy of Exhibit B8. Your copy that  
20 Ms. Conroy just handed you has an arrow  
21 pointing at the far left -- the far right,  
22 sorry. I had to reverse myself --  
23 description under the far right green box; is  
24 that right?

1           A.       Right.

2           Q.       And otherwise, they're the  
3       same?

4           A.       Right. But the whole document,  
5       I think, is provided. So here's the whole  
6       opinion, I think. Maybe not. The whole  
7       opinion is the whole document. Apparently,  
8       that wasn't sent, but this is enough.

9           Q.       So Dr. Egilman, your basis for  
10      this opinion is again one document; right?

11          A.       Correct.

12          Q.       You don't identify any  
13      deposition testimony; right?

14          A.       Correct.

15          Q.       You don't identify any other  
16      documents that led to this opinion; right?

17          A.       Correct.

18                    The basis for my opinion as  
19      stated in this opinion is one document.  
20      There is other bases elsewhere in the report.

21                    But go ahead.

22          Q.       Okay. But you don't state any  
23      of those other bases here under your opinion;  
24      right?

1           A.       Correct.

2           Q.       You don't provide us any kind  
3       of cross-reference that would allow us to  
4       know where else in your report you provide  
5       bases for this opinion; right?

6                   MS. CONROY:  Objection.

7                   THE WITNESS:  Correct.

8           Q.       (BY MS. SAULINO)  Now, breaking  
9       this opinion down, because it seems to have  
10      several parts.  Would you agree with me on  
11      that?

12          A.       Sure.

13          Q.       Okay.  You first say, "The  
14      venture knew collective marketing increased  
15      the size of the opioid pie"; right?

16          A.       Correct.

17          Q.       And we've just established you  
18      cite one document for that; right?

19          A.       In this opinion, correct.

20          Q.       Okay.  And this document  
21      doesn't actually name any members of the  
22      venture; right?

23          A.       Well, it's a Janssen document.

24          Q.       Well, it's simply --

1           A.       And the name's OxyContin, which  
2       is a Purdue product.

3           Q.       Well, sir, when you say it's a  
4       Janssen document, all you know is that it was  
5       produced by Janssen; right?

6           A.       No, I think it's a Janssen  
7       document. If you look at the document, it's  
8       a Janssen document.

9           Q.       Okay. I'm looking at your  
10      Exhibit 8.

11          A.       Yeah. I say if you look at  
12      the -- if you look at the Bates numbered  
13      actual document, it's a Janssen document.  
14      That's my recollection.

15          Q.       A document that was produced by  
16      Janssen?

17          A.       Written -- yeah. It's not an  
18      FDA document produced by Janssen. It's a  
19      Janssen document produced by Janssen.

20          Q.       Do you have any basis for that  
21      knowledge?

22          A.       I think it says it on the  
23      document.

24          Q.       Did you see any deposition

1 testimony to that effect?

2 A. No.

3 Q. Did you do any research to that  
4 effect?

5 A. No.

6 Q. And you say similar -- your  
7 next piece of your opinion is "Similarly, had  
8 any venture members broken ranks, the"  
9 opinion marked -- I'm sorry -- "Had any  
10 venture member broken ranks, the opioid  
11 market would have slowed or if the complete  
12 truth was told, no efficacy and high  
13 addiction risk, the market would have  
14 crashed." Right?

15 A. Right.

16 Q. And you base that again on this  
17 one screenshotted document that you have here  
18 on B8?

19 A. No. There's other documents  
20 that --

21 MS. CONROY: Objection.

22 THE WITNESS: There's other  
23 documents that support that as well  
24 elsewhere in the report. But the --



1                   So there's other documents.

2                   There's other bases for that opinion.

3                   Q.       (BY MS. SAULINO)   Nothing  
4                   listed here; right?

5                   A.       Correct.

6                   Not in this opinion.

7                   Q.       And there's nothing on this  
8                   document that talks about breaking ranks, is  
9                   there?

10                  A.       That's correct.

11                  Q.       Okay. And you don't cite to  
12                  any deposition testimony that leads to that  
13                  conclusion; right?

14                  A.       Correct.

15                  Q.       Okay. Let's look at  
16                  Opinion 62, which is on page 71.

17                  A.       Okay.

18                  Q.       In Opinion 62 you say,  
19                  "Opinion. When the FDA tried to limit use in  
20                  2001 by changing the label from more than a  
21                  few days to extended period of time, the  
22                  venture used this language to increase the  
23                  market"; right?

24                  A.       Correct.

1 Q. Okay.

2 And if you then look at

3 Exhibit B62 -- I can hand it to you.

4 Oh. What do you have there?

5 A. B62.

6 Q. All right. Well, let me make

7 sure that your B62 and mine are the same.

8 You have a Redweld as well?

9 MS. CONROY: Of the Bates  
10 documents.

11 THE WITNESS: This is the  
12 online Bates document.

13 Q. (BY MS. SAULINO) Okay. Let  
14 me -- I will hand you the exhibit,  
15 Dr. Egilman. I'm just trying to make sure I  
16 understand what you have here.

17 A. I think I've got a mark on  
18 mine, so.

19 Q. I'm sorry?

20 A. I've got -- this is the one I  
21 read and marked.

22 Q. Okay.

23 Would you like a sticker?

24 A. Sure.

1 Q. You have it for 18?

2 (Whereupon, Deposition Exhibit  
3 Egilman 18, Opinion - When the FDA  
4 tried to limit use in 2001 by changing  
5 the label from "more than a few days"  
6 to "extended period of time," the  
7 "venture" used this language to  
8 increase the market, was marked for  
9 identification.)

10 Q. (BY MS. SAULINO) Can you show  
11 me what you've marked?

12 A. Okay.

13 Q. All right. So looking at  
14 Exhibit 62 --

15 MS. CONROY: Exhibit 18. B62.

16 MS. SAULINO: Sorry,  
17 Exhibit 18. B62.

18 Q. (BY MS. SAULINO) On the first  
19 page of Exhibit 18, you quote from a CBS News  
20 article; right?

21 It's the "60 Minutes."

22 A. Correct, the "60 Minutes"  
23 piece.

24 Q. Right, a "60 Minutes" piece,

1 but it's from cbsnews.com; right?

2 A. Correct. It's a transcript of  
3 the "60 Minutes" TV show.

4 Q. Well, it's a portion of a  
5 transcript; right?

6 A. Correct.

7 Q. There's no Bates number listed  
8 there; right?

9 A. Correct.

10 Q. Okay.

11 And then, you then attach a --  
12 one single e-mail chain; right?

13 A. Correct.

14 Q. That's an internal e-mail chain  
15 from Purdue; right?

16 A. Correct.

17 Q. Those are the two pieces of  
18 evidence that you cite for saying that the  
19 venture used this language to increase the  
20 market.

21 A. Correct.

22 Q. You don't cite to any other  
23 documents; right?

24 A. Not in this opinion.

1           Q.       And you don't cite to any  
2 deposition testimony; right?

3           A.       Correct.

4           Q.       And you don't provide us the  
5 question that you were seeking to answer;  
6 right?

7           A.       Well, that's again the  
8 assignment.

9           Q.       You don't provide us the  
10 question that resulted in this opinion;  
11 right?

12          A.       Not the specific question that  
13 resulted in this opinion. I gave you the  
14 methodology that resulted in this opinion.

15          Q.       Well, sir, you actually haven't  
16 given us the methodology that resulted in  
17 this opinion. That's not written here, is  
18 it?

19          A.       It's not on the opinion.

20          Q.       And you agreed with me earlier  
21 that you used different types of methodology  
22 for different opinions; right?

23          A.       No. It's the same methodology.  
24 It's the same search techniques and review of

1 documents for all of the non, say, medical  
2 opinions. The medical opinions are based on  
3 evidence-based medicine to the extent  
4 possible. That's mostly the efficacy, other  
5 things like that.

6 And the non-medical opinions --  
7 non-medical drug efficacy opinions are based  
8 on grounded method theory.

9 Q. Well, okay. So that's a bit  
10 different than what you told me earlier.

11 So where in your report have  
12 you indicated which are the medical opinions  
13 based on evidence-based medicine and which  
14 are the other opinions that are based on  
15 grounded method theory?

16 MS. CONROY: Objection.

17 THE WITNESS: First, I don't  
18 think that's different from what I  
19 told you before. I think I told you  
20 that specifically before. And you  
21 need to obviously -- when I'm talking  
22 about EERW, I'm talking about medical  
23 opinions. If I'm talking about the  
24 Roth paper, I'm talking about medical

1 evidence.

2 If I'm talking about the  
3 efficacy of opioids for chronic  
4 non-malignant pain, I'm talking about  
5 medical opinions.

6 Q. (BY MS. SAULINO) Let's just  
7 talk --

8 A. If I'm talking about policy  
9 issues of how the companies marketed, took  
10 advantage of FDA language, that's a grounded  
11 theory opinion.

12 Q. And this breakdown appears  
13 nowhere in your report; correct?

14 A. I think it's pretty clear if we  
15 look at the methodology. Evidence-based  
16 medicine deals with medical questions. If  
17 you look at the rest of that section, it  
18 deals with cause-effect relationships,  
19 choice-of-treatment modalities, efficacy,  
20 side effects, et cetera.

21 I think it's clear that  
22 marketing and other related, over --  
23 overselling, things like that, that's not  
24 based on a similar kind of evidence base that

1 will determine whether or not you use opioids  
2 for chronic non-malignant pain.

3 Q. The explanation you just gave  
4 does not appear in your report; correct?

5 MS. CONROY: Objection.

6 THE WITNESS: Those words do  
7 not appear, but I think it's clear if  
8 you read the introduction to the  
9 report, that that's a distinction. It  
10 doesn't need an explicit definition  
11 since evidence-based medicine is  
12 titled evidence-based medicine.

13 And I gave you examples. If  
14 you look at the grounded theory of  
15 five or six papers that I published on  
16 grounded theory, and if you look at  
17 just the titles of those papers, you  
18 see that they're dealing with other  
19 issues, similar ones I deal with here.  
20 Off-label marketing. Promotion.  
21 Illegal promotion. False and  
22 misleading advertising. That kind of  
23 activity. That's all grounded  
24 theory-based. And there's examples in



1 the introduction that -- for both.

2 Q. (BY MS. SAULINO) So if we  
3 wanted to figure out which methodology you  
4 used for which opinion, we'd have to guess  
5 whether it was a medical opinion or a  
6 marketing opinion.

7 A. If you think that's a guess,  
8 then I guess you could call it a guess. I  
9 wouldn't call it a guess. I think it's  
10 obvious.

11 Q. Okay. Let's look at the one --  
12 let's look at Exhibit 15 to your deposition,  
13 the one we were just looking at, No. 8.

14 A. Right.

15 Q. You'd agree with me that  
16 that --

17 A. Wait a minute. 15, did you  
18 say?

19 MS. CONROY: 17.

20 MS. SAULINO: 17. Sorry.

21 Exhibit 17. It's getting a little  
22 late. I apologize.

23 THE WITNESS: You did say 15.

24 MS. SAULINO: I'm sure I did,

1           sir. I apologize. I misspoke.

2                   THE WITNESS: I'm on 17.

3           Q.       (BY MS. SAULINO) 17, Opinion

4   No. 8.

5           A.       Okay, right.

6                   This is obviously a grounded  
7   theory-based issue. There's no math modeling  
8   here. There's no data that was collected by  
9   anybody that I know that shows, quote,  
10   business expansion is driven by OxyContin.

11          Q.       Dr. Egilman, I haven't asked my  
12   question yet. Could I ask my question?

13          A.       Go ahead.

14          Q.       You would agree with me that  
15   this opinion discusses efficacy and high  
16   addiction risks; right?

17          A.       Correct.

18          Q.       An opinion that you hold based  
19   on your medical experience; right?

20          A.       No. This is dealing with those  
21   that -- those efficacy and high addiction  
22   risks as it should have been told by the  
23   companies. This is a breaking ranks opinion.

24          Q.       But your belief that it should

1       have been told that way by the companies is  
2       based on your medical opinion; correct?

3               A.       Probably true.

4               Q.       Okay.

5               A.       Okay. But -- but that --

6               Q.       So for this opinion, you would  
7       have --

8                       MS. CONROY: Let him finish his  
9       answer.

10               MS. SAULINO: He did answer.

11               THE WITNESS: Go ahead. My  
12       answer is incomplete. Go ahead.

13               Q.       (BY MS. SAULINO) So for this  
14       opinion, we would have to guess whether you  
15       used the grounded theory approach or the  
16       evidence-based medicine opinion; right?

17               MS. CONROY: Objection.

18               THE WITNESS: No. Not at all.

19               Q.       (BY MS. SAULINO) You think  
20       it's obvious?

21               A.       I think it's obvious.

22               Q.       But you don't list it anywhere  
23       here?

24               A.       Because it's obvious.

1           Q.       You don't list, for any  
2       opinion, which approach you took; correct?

3           A.       Explicitly, no. But I think  
4       it's obvious.

5           Q.       So earlier when you testified  
6       that you were actually using a combination of  
7       the two, that was inaccurate?

8           A.       No, that was for the whole  
9       report.

10          Q.       When I was asking you questions  
11       about the evidence-based medicine approach  
12       and you were bringing in part of the grounded  
13       theory approach, and I asked you why you were  
14       doing that, and you said because you used  
15       them in combination, that's not actually what  
16       happened?

17                   MS. CONROY: Objection.

18                   THE WITNESS: The only  
19       combination would be if -- what you  
20       just did with this opinion, right, the  
21       evidence-based medicine leads to  
22       the -- to the conclusion that the  
23       drugs are not efficacious and they're  
24       addictive. Right?

1                   So to the extent that you're --  
2                   to the extent that you're correct,  
3                   that that's an evidence-based medical  
4                   derived opinion, which it probably is,  
5                   okay? -- that's a component of this  
6                   grounded theory opinion, but for the  
7                   most part, this is basically a  
8                   grounded theory opinion.

9                   Q.           (BY MS. SAULINO)   Okay.   So  
10                  your testimony earlier when you were  
11                  explaining to me how you combined the two  
12                  methodologies was not accurate?

13                  MS. CONROY:   Objection.

14                  THE WITNESS:   I don't recall it  
15                  completely.   I just told you an  
16                  example of where it would be accurate.

17                  It doesn't -- I didn't use them  
18                  in combination all the time.   Okay?  
19                  And I didn't even think about the  
20                  example you just pointed out so  
21                  deftly, and where they were used in  
22                  combination.

23                  Q.           (BY MS. SAULINO)   Well, about  
24                  five minutes ago, you told me it was obvious

1       this was the grounded theory approach. So  
2       that's not true either; right?

3               A.       Sure it is. This is obviously  
4       a grounded theory approach. The small  
5       component of this is that there's a high  
6       addiction risk. You don't need to do  
7       evidence-based medicine for that. Okay?  
8       That -- that's -- that's -- that was obvious,  
9       I think, to the -- to the venture members for  
10      a long time.

11             Q.       Efficacy is also a medical  
12      opinion; right?

13             A.       No efficacy? Yeah, that's  
14      true, and that was also known to them.  
15      That's an easy one. There's no studies to  
16      date that show that these drugs worked for  
17      chronic, non-malignant pain.

18             Q.       The fact of the matter is,  
19      Dr. Egilman, there is no way for us to look  
20      at your report and by reading your report  
21      know which theory you used to come to which  
22      opinion; right?

23                     MS. CONROY: Objection.

24                     THE WITNESS: Wrong.

1           Q.       (BY MS. SAULINO) We'd have to  
2       assume?

3           A.       No.

4                   MS. CONROY: Objection.

5                   THE WITNESS: It's obvious. If  
6       I'm giving an opinion about EERW or  
7       technical epidemiologic analysis, or  
8       criticizing the methodology used to  
9       come up with 100 million untreated  
10      pain patients, that's -- that's an  
11      epidemiologic evidence-based medical  
12      criticism.

13          Q.       (BY MS. SAULINO) You don't say  
14      that in your report, do you?

15          A.       If I'm giving an opinion like  
16      I -- like this one that -- that the business,  
17      that is, the opioid business was driven by  
18      OxyContin sales, that's based on grounded  
19      theory and these documents.

20                   It's not based on any  
21      epidemiologic study.

22          Q.       You don't say any of that in  
23      your report, do you?

24          A.       Not explicitly. You would have

1 to actually read the introduction and apply  
2 the correct theory to what's the obvious  
3 correct opinion.

4 Q. All right. Let's look at  
5 Opinion 69, which is on page --

6 A. 72.

7 Q. Thank you. And you have a  
8 different 69 than I do for Exhibit B69?

9 A. I do. And this is also  
10 incomplete.

11 But it's one I corrected the  
12 opinion on.

13 Q. Okay. Well, let's just break  
14 this down.

15 So can I see what you are  
16 looking at right now?

17 Okay. So what you are looking  
18 at -- okay -- is Exhibit B69 with your  
19 handwriting on it, which is a copy of what we  
20 were given as Exhibit B69, which you have  
21 changed. Correct?

22 A. Correct.

23 Q. So let's mark that.

24 A. But also the entire article was



1       given to you and is in my right hand.

2               Q.       Okay.

3                       Sir, I don't know what you  
4       think was given to us, but the one page that  
5       has just been marked as Exhibit 19 to your  
6       deposition is what the defendants received as  
7       Exhibit B69.

8                       (Whereupon, Deposition Exhibit  
9       Egilman 19, Opinion - the "venture"  
10      corrupted the FDA and Salem --  
11      News.com FDA Corruption Worsens as  
12      Death Toll Mounts in Drug Epidemic!  
13      article, was marked for  
14      identification.)

15                      MS. CONROY:   Can I see  
16      Exhibit 19?

17               Q.       (BY MS. SAULINO)   And you've  
18      now written over that and changed the  
19      opinion; is that right?

20               A.       Right.

21               Q.       Okay.   What have you changed  
22      the opinion to say?

23               A.       I changed it to the FDA was --  
24      in -- in -- over -- it should be overworked,

1 understaffed, underpaid, and had a revolving  
2 door.

3 Q. Okay. And you've not disclosed  
4 that new opinion to the defendants until just  
5 this moment when I asked about it?

6 A. Right. I changed it last  
7 night.

8 MS. CONROY: Objection.

9 Q. (BY MS. SAULINO) You changed  
10 it last night?

11 A. Yes.

12 Q. Did you change any of your  
13 other opinions yesterday?

14 A. Did I change any of them? I  
15 don't think so. I mean, I wrote notes on a  
16 lot of them.

17 Q. So to your recollection, this  
18 is the only opinion that you have changed?

19 A. Correct.

20 Q. Okay. And there's no way for  
21 us to know -- if you've changed any others,  
22 there's no way for us to know except that you  
23 don't currently recall changing any others?

24 A. No. I've got them all in this

1       box. You can mark the box. You've been  
2       going through the box during some of the  
3       breaks. I don't think there's any others.

4               Q.       Okay. And your original  
5       opinion here was that the venture corrupted  
6       the FDA --

7               A.       Correct.

8               Q.       -- right?

9                       And you now don't believe that  
10      that opinion holds?

11              A.       Let's say it's -- it depends  
12      how you define "revolving door" and what went  
13      on in the revolving door.

14              Q.       I --

15              A.       So --

16              Q.       How did we get to a revolving  
17      door? I was looking at your original  
18      opinion.

19              A.       Okay. But you didn't ask that.

20              Q.       Yeah, I did.

21              A.       No, you said -- you just -- you  
22      didn't --

23                      Your original opinion [sic] was  
24      that the venture corrupted the FDA?

1 Right.

2 And now you don't believe that  
3 opinion holds was your question.

4 Q. Correct.

5 A. That was not a reference to  
6 this opinion. That was a general question  
7 about what my opinion was now.

8 Q. Okay. Well, I apologize if you  
9 found that unclear in some way.

10 You no longer --

11 A. I didn't find it unclear at  
12 all. I was answering it.

13 Q. Let me change the question,  
14 Dr. Egilman.

15 You no longer believe the  
16 venture corrupted the FDA?

17 A. No longer willing to say that  
18 this evidence is complete support for that  
19 opinion.

20 Q. Okay. But the evidence that is  
21 cited on B69, you believe is complete support  
22 for your new opinion that the FDA was  
23 overworked, understaffed, underpaid, and had  
24 a revolving door --

1           A.       Correct.

2           Q.       -- is that right?

3                    Okay. And your complete  
4 support for that is found in Exhibit B69?

5           A.       Correct.

6           Q.       No deposition testimony in  
7 addition to this? Right?

8           A.       No, there's other --

9                    Well, no. I have a lot of  
10 other support for this with respect to --  
11 this all refers to -- this refers to  
12 Rappaport and Curtis Wright. So there's a  
13 lot of other evidence for this. It's not in  
14 the opinion, but there's a lot of other  
15 evidence in other opinions, particularly  
16 about Rappaport.

17          Q.       When you say "This refers to  
18 Rappaport and Curtis" Knight --

19          A.       Curtis Wright, right.

20          Q.       Right. What do you mean  
21 "this"?

22          A.       This opinion. It cites them.

23          Q.       The opinion cites a single  
24 Salem News article, sir; right?

1           A.       The single Salem News article  
2 describes what happened with the approval of  
3 Zohydro, and it also talks about  
4 Curtis Wright. And the revolving door with  
5 Curtis Wright.

6           Q.       Okay. But you don't cite to  
7 anything else besides this single Salem News  
8 article; right?

9           A.       Those things are in here.  
10 That's correct.

11          Q.       In the news article?

12          A.       That's correct.

13          Q.       Written by someone at the Salem  
14 News; right?

15          A.       Correct.

16          Q.       Not written by you?

17          A.       Correct. I didn't write the  
18 article.

19                   What do you want me to do with  
20 the complete article that was supposed to be  
21 attached?

22          Q.       Okay. When you say "the  
23 complete article that was supposed to be  
24 attached," what are you handing me right now?

1 MS. CONROY: It's the link.

2 It's the printout of the link that is  
3 on the exhibit.

4 Q. (BY MS. SAULINO) So rather  
5 than a third-page snippet that's on  
6 Exhibit B69, you actually meant for the whole  
7 page in a third article to be included on  
8 B69?

9 A. That's why I gave you the link.

10 Q. Okay. So why don't we attach  
11 that to Exhibit 19.

12 A. I did.

13 Q. But there's nothing else that  
14 you intended to attach to Exhibit 19; right?

15 A. No. There's other opinions  
16 that relate to that opinion.

17 Q. And you don't cross-reference  
18 other opinions in that opinion; right?

19 A. Correct.

20 Q. And when we say "that opinion,"  
21 we mean Opinion 69; right? Which has now  
22 been rewritten?

23 A. Correct.

24 Q. And you don't provide any

1 roadmap in your report that would show us  
2 what other opinions support Opinion 69;  
3 right?

4 MS. CONROY: Objection.

5 THE WITNESS: I don't have a  
6 roadmap, but the Zohydro story with  
7 Rappaport is in other documents that  
8 are in my opinions.

9 Q. (BY MS. SAULINO) There's no  
10 way for us to look at your opinions and know  
11 which other opinions relate to this opinion;  
12 right?

13 A. You'd have to search for  
14 Rappaport and Zohydro and then you'd find  
15 them.

16 Q. In all of the 23 boxes that are  
17 behind me, that's what we'd have to do?

18 A. No, you'd do it digitally  
19 pretty quickly.

20 Q. But the digital version of the  
21 23 boxes that are behind me --

22 A. Yes.

23 Q. -- we'd have to search for  
24 those two names in the 23 boxes that are



1       behind me, and then we would know the other  
2       basis for your opinion?

3               A.       Well, then you'd know other  
4       supporting evidence, right.

5               Q.       But not any -- but not all of  
6       the other bases for your opinion?

7               A.       No. Not all of the other bases  
8       for my opinion. I reviewed a lot of other  
9       documents. There's a lot of other support  
10      for that opinion. I mean, I've read  
11      Curtis Wright's depositions. I've read a lot  
12      of Purdue documents.

13                      Some of them -- some of those  
14      are included in the introductory materials on  
15      Purdue with respect to Curtis Wright,  
16      Curtis Wright's approvals, Curtis Wright's  
17      actions at the FDA in approving OxyContin  
18      initially. So that's all -- a lot of that is  
19      in there and pretty obvious.

20              Q.       None of what you just said is  
21      in your report; right?

22                      MS. CONROY: Objection.

23                      THE WITNESS: No.

24                      MS. SAULINO: I know our

1           Special Master needs to leave soon,  
2           and wanted to put something on the  
3           record.

4                   SPECIAL MASTER COHEN: Do you  
5           want to take a moment to do that now?

6                   MS. SAULINO: Yeah. Why don't  
7           we take a moment to do that.

8                   SPECIAL MASTER COHEN: Okay.

9                   I'm here just today. I'm not  
10          here tomorrow. I have very  
11          purposefully tried not to insert  
12          myself into this deposition unless I  
13          was either asked to or it became very  
14          clear I needed to because I won't be  
15          here tomorrow, and so I won't be in a  
16          position to assert myself.

17                   What I want to do now is just  
18          make a little speech so that hopefully  
19          I won't get a lot of phone calls  
20          tomorrow because I'm going to be in  
21          another deposition doing the same  
22          thing in Washington, D.C. And what I  
23          want to remind everybody is, first of  
24          all, I'm going to turn to you,

1 Dr. Egilman, and ask you to remember  
2 tomorrow all the things that I said  
3 today. That your answers can and  
4 should be succinct. If you were to do  
5 a review of all of your answers today,  
6 the longest one was probably a minute,  
7 and most of them were probably about  
8 20 seconds or less.

9 That's how it should be  
10 tomorrow, the same way.

11 There's no reason to interrupt  
12 each other. I think it will help if  
13 everybody just lets everybody answer  
14 the question. And so it's my hope  
15 that I don't receive any calls for  
16 help tomorrow in settling disputes.  
17 It's clear that you can do this  
18 without me.

19 Any questions?

20 Okay. And I'm going to leave  
21 in about 15 minutes because I have to  
22 get to the airport to go to D.C. That  
23 doesn't mean you all have to stop.

24 And thank you for buying me lunch, and

1 I'll see you again soon, I'm sure.

2 MS. CONROY: Thank you.

3 MS. SAULINO: Thank you.

4 (Discussion off the record.)

5 MS. SAULINO: There have been a  
6 few minutes that were used for  
7 plaintiffs.

8 MS. CONROY: I think two  
9 minutes is an exaggeration.

10 THE WITNESS: You can have an  
11 extra two minutes.

12 Q. (BY MS. SAULINO) Let's look at  
13 Opinion 129.

14 A. Let me just tell you what my  
15 desire is, while the Special Master is here,  
16 is to go to seven hours today, to take a  
17 dinner break, and then come back and do  
18 another two or three hours.

19 MS. SAULINO: Okay. We can  
20 talk about that at the next break.

21 I appreciate you telling me,  
22 but I'd like to -- for not to eat up  
23 time right now figuring that out.

24 SPECIAL MASTER COHEN: That's



[illegible]

[illegible]

[illegible]



[illegible]

[illegible]

[illegible]

[illegible]

[illegible]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 McKesson Connect web page?

14 A. I think so.

15 Q. Okay.

16 Handing you what's been marked  
17 as Exhibit 21 to your deposition.

18 (Whereupon, Deposition Exhibit  
19 Egilman 21, Login to McKesson Connect,  
20 was marked for identification.)

21 Q. (BY MS. SAULINO) Which is the  
22 log-in page for McKesson Connect.

23 A. Okay.

24 Q. Is this what you saw?

1           A.       I think so.

2           Q.       Okay. And you couldn't get  
3 access; right?

4           A.       Correct. Because I don't have  
5 Jones Day's skills.

6           Q.       Because this site is for  
7 McKesson partners and customers only; right?  
8 As it says here?

9           A.       Correct.

10          Q.       And physicians are not McKesson  
11 customers; right?

12                   MS. CONROY: Objection.

13                   THE WITNESS: Depends how you  
14 define "customer."

15          Q.       (BY MS. SAULINO) You as a  
16 physician could not get access to this web  
17 portal; correct?

18          A.       Correct.

19          Q.       You don't know any physician  
20 who could get access to this web portal;  
21 correct?

22                   MS. CONROY: Objection.

23                   THE WITNESS: I don't know any  
24 who have tried.



1 Q. (BY MS. SAULINO) And  
2 physicians are not McKesson partners;  
3 correct?

4 MS. CONROY: Objection.

5 THE WITNESS: Do you mean as  
6 defined in your -- on your web portal?

7 Q. (BY MS. SAULINO) Yes,  
8 Dr. Egilman.

9           A.     That's my understanding.

| Row | Bar 1 Length | Bar 2 Length | Bar 3 Length |
|-----|--------------|--------------|--------------|
| 1   | 10           | 10           | 10           |
| 2   | 10           | 10           | 10           |
| 3   | 10           | 10           | 10           |
| 4   | 10           | 10           | 10           |
| 5   | 10           | 10           | 10           |
| 6   | 10           | 10           | 10           |
| 7   | 10           | 10           | 10           |
| 8   | 10           | 10           | 10           |
| 9   | 10           | 10           | 10           |
| 10  | 10           | 10           | 10           |
| 11  | 10           | 10           | 10           |
| 12  | 10           | 10           | 10           |
| 13  | 10           | 10           | 10           |
| 14  | 10           | 10           | 10           |
| 15  | 10           | 10           | 10           |

[illegible]

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods used to collect and analyze data. It includes a detailed description of the sampling process and the statistical techniques employed to interpret the results.

3. The third part of the document presents the findings of the study. It shows that there is a significant correlation between the variables being studied, which supports the hypothesis that was tested.

4. The fourth part of the document discusses the implications of the findings for future research and practice. It suggests that the results could be used to inform policy decisions and to guide the development of new programs and initiatives.

5. The fifth part of the document provides a conclusion and a summary of the key points. It reiterates the importance of the study and the need for continued research in this area.

6. The sixth part of the document includes a list of references to the sources used in the study. It also includes a list of appendices that provide additional information and data.

7. The seventh part of the document is a glossary of terms that are used throughout the document. It defines the key concepts and provides a clear understanding of the terminology used.

8. The eighth part of the document is a list of figures and tables that are included in the study. It provides a clear and concise summary of the data presented in the document.

9. The ninth part of the document is a list of footnotes that provide additional information and references. It also includes a list of acknowledgments that thank the individuals and organizations that provided support and assistance during the study.

10. The tenth part of the document is a list of appendices that provide additional information and data. It includes a list of tables and figures that are used in the study, as well as a list of references and a list of footnotes.

[illegible]

[illegible]

[REDACTED]

19 Q. And the McKesson Redweld that  
20 you're talking about is actually a stack of  
21 Redwelds; right?

22 A. Right.

23 Q. Okay. And we're going to mark  
24 that stack as Exhibit 23.

1           A.       There was one Redweld for all  
2   of these. No?

(Whereupon, Deposition Exhibit  
Egilman 23, compilation of Redweld  
folders, was marked for  
identification.)

7 Q. (BY MS. SAULINO) There was?

8           A.       I thought so, but maybe I'm  
9       wrong. I didn't do this part.

10 Q. Well, we'll mark that stack

11 as --

12           A.       The lawyers did this part.

13           Q.       We'll mark that stack as

14       Exhibit 23.

1. Identify the problem

2. Gather information

3. Analyze the information

4. Develop a plan

5. Implement the plan

6. Monitor the results

7. Evaluate the results

8. Reflect on the process

22 (Reporter asked for  
23 clarification.)

24 THE WITNESS: That McKesson was

1           marketing opioids for manufacturers of  
2           opioids.

3           Q.       (BY MS. SAULINO)   Okay.   And  
4   you don't provide that stack -- that listing  
5   of that stack in your report anywhere; right?

6           A.       The listing of the stack is not  
7   here.   Each of the individual documents and  
8   opinions is in the report.

9           Q.       All right.   Let me ask you  
10   this, Dr. Egilman.

11                    You've not ever seen any  
12   talking points that McKesson used to market  
13   directly to doctors, have you?

14          A.       No.

15                    Just an administrative  
16   question.   Did you want this Exhibit 22 to  
17   include the entire Redweld or just this  
18   document?

19          Q.       Yes.   Let's make Exhibit 22  
20   include the entire Redweld, which you're now  
21   saying is your complete Exhibit 22 -- the  
22   complete version of Exhibit 22; right?

23                    MS. CONROY:   Objection.

24                    (Whereupon, Deposition Exhibit



1           Egilman 22, Opinion B.385, was marked  
2           for identification.)

3                   THE WITNESS: No problem. Just  
4           asking.

5           Q.       (BY MS. SAULINO) Now,  
6   Dr. Egilman, do you hold yourself out to be  
7   an expert in FDA regulations?

8           A.       Based on my definition of  
9   "expert," yes.

10          Q.       Okay. Have you ever been  
11   qualified by a court as an expert in FDA  
12   regulations?

13          A.       I've testified in court on FDA  
14   regulations.

15          Q.       Have you ever been qualified by  
16   a court as an expert in FDA regulations?

17          A.       I assume if I testified, I was  
18   qualified.

19          Q.       Okay. So you don't know?

20          A.       Well, normally -- I don't  
21   recall -- I'm not -- not usually there when  
22   the motions in limine are made. And so I  
23   assume if I come to court and I testify about  
24   FDA regulations, that that's all been dealt

1 with before, that a judge has approved my  
2 testimony about FDA regulations.

3 Q. You would agree with me that  
4 pharmaceutical manufacturers have to follow  
5 FDA regulations; right?

6 A. What do you mean by "have to"?

7 Q. You find the question  
8 ambiguous?

9 A. I do.

10 You know, there's lots of cases  
11 where manufacturers have not followed FDA  
12 regulations. Right? I've got -- or  
13 distributors. I've got all kinds of examples  
14 here.

15 So when you say "have to," I  
16 know that there are laws that say they should  
17 or shall, and I know that generally when they  
18 don't, there's no penalty.

19 Q. You would agree with me that  
20 FDA regulations hold the force of law for  
21 pharmaceutical manufacturers; right?

22 A. Some do.

23 Q. And since you are holding  
24 yourself out as an expert in FDA regulations,

1       you would agree with me that the message --  
2       the marketing messaging that pharmaceutical  
3       manufacturers use is something that has to be  
4       approved by the FDA; right?

5                       MS. CONROY:  Objection.

6                       THE WITNESS:  No, not exactly.

7               Q.       (BY MS. SAULINO)  What is your  
8       disagreement with that statement?

9               A.       That's not what happens.

10                      Marketing messages get sent to  
11       the FDA.  The FDA reviews a small percentage  
12       of them, but they never send an approval  
13       letter out for the ones they don't look at.  
14       So marketing for the most part, the FDA works  
15       on a snitch system where one company snitches  
16       on another company, and that's how they find  
17       out that somebody's violating the off-label  
18       rules generally, and then they may clamp  
19       down.

20                      But the FDA, by itself, has  
21       very little staff, and they certainly don't  
22       review all of the marketing messages and  
23       approve them.  They get them.

24               Q.       What's the basis for what you

1       just said?

2               A.       Well, I was at a conference  
3       where the FDA people spoke, and I sat at a  
4       table with the people from DDMAC who told me  
5       what the process was. That was around 2003,  
6       2004.

7               Q.       And the officials from DDMAC  
8       told you --

9               A.       Excuse me, I'm not done with  
10      that answer. You said what's the basis for  
11      that. Okay?

12              Q.       I'd like to know what the  
13      officials from DDMAC told you.

14              A.       Do you want the incomplete  
15      answer, I'm done with the answer. No  
16      problem. Just it's incomplete.

17                      If you want to cut me off, no  
18      problem.

19              Q.       The officials from DDMAC told  
20      you that the FDA process is based on a snitch  
21      system?

22              A.       They said that that was -- that  
23      generated most of their actions.

24              Q.       Okay. And they told you --

1           A.       And they told me they had six  
2       staff to review all of the marketing messages  
3       that were submitted annually at that time,  
4       and they didn't -- they didn't review them.

5           Q.       So your --

6           A.       They didn't review nearly all  
7       of them.

8           Q.       So you're basing this expertise  
9       on one conversation you had at a dinner?

10               MS. CONROY:  Objection.

11               THE WITNESS:  No.  There was a  
12       whole conference on this issue.  It  
13       was discussed at the conference.  
14       Abrams was speaking at the conference,  
15       and a lot of people -- because of the  
16       lunch, I had a lot of time to have  
17       side conversations and more detailed  
18       conversations about the process than  
19       just what was in the lecture series.

20           Q.       (BY MS. SAULINO)  So you're  
21       basing this opinion on one conference that  
22       you went to several years ago?

23           A.       No.  I've read other things  
24       about this process.  I've read documents

1 about this process in the Vioxx litigation,  
2 the Actos litigation, in the Zyprexa  
3 litigation, in the Purdue litigation.

4 So, I mean, I've seen how the  
5 FDA doesn't regulate marketing over time.

6 Q. Okay. Your opinion at  
7 page 126, 7.430?

8 A. 7 which?

9 Q. 430. Bottom of page 126.

10 A. Okay.

[REDACTED]

[illegible]

|   |            |            |            |
|---|------------|------------|------------|
| ■ | [REDACTED] |            |            |
| ■ | [REDACTED] |            |            |
| ■ | ■          | [REDACTED] |            |
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| ■ | ■          | [REDACTED] |            |
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| ■ | [REDACTED] |            |            |
| ■ | ■          | [REDACTED] |            |
| ■ | ■          | [REDACTED] | [REDACTED] |
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| ■ | ■          | [REDACTED] |            |
| ■ | ■          | [REDACTED] | [REDACTED] |
| ■ | [REDACTED] |            |            |
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[REDACTED]

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A vertical list of 20 redacted items. Each item consists of a small black square followed by a horizontal black bar. The bars vary in length and position, with some spanning the width of the page and others being shorter and indented.

19 Q. Okay. Dr. Egilman, before we  
20 conclude today, I want to make sure to mark a  
21 number of things.

22           A.       Are we concluding today?

23 Q. Well, at least concluding  
24 before the break and then we can talk about

1       your request for coming back after dinner.

2                       So first, you have a number of  
3       colored folders that have numbers on them  
4       that you have sat in front of you here today;  
5       right?

6               A.       I do. I also have some notes.

7               Q.       Some notes. Okay.

8                       And you brought those intending  
9       to use these colored folders and notes during  
10      your deposition today?

11                      MS. CONROY: Objection.

12                      THE WITNESS: No. Not  
13      necessarily.

14               Q.       (BY MS. SAULINO) Well, you've  
15      laid them out very carefully, taken up a good  
16      amount of our precious space here at the  
17      table. So you brought them for a reason;  
18      right?

19               A.       I thought they would be helpful  
20      from time to time, yes.

21               Q.       Okay.

22               A.       They have been helpful from  
23      time to time. But I can't predict what the  
24      question is, so I brought things that I

1 thought you might ask about that might be  
2 helpful as answers.

3 Q. And you've numbered them 1  
4 through -- it looks like 32; is that right?  
5 Is new bias?

6 A. I don't know.

7 Q. Okay. Can we move your  
8 McKesson Redweld?

9 A. Sure.

10 Q. Okay. And I think this is part  
11 of your McKesson Redweld.

12 All right. And I think that  
13 was Exhibit B62.

14 A. Well, it's empty now.

15 Q. I'm looking at the title of the  
16 blue folder.

17 MS. CONROY: Give it to me.

18 Q. (BY MS. SAULINO) Okay. So  
19 these colored folders, you had intended to  
20 rely on these in your deposition?

21 A. I did rely on them.

22 Q. Okay. I'd like to mark these  
23 as an exhibit to your deposition.

24 And --

1           A.       Fine with me.

2           Q.       We can mark them as one  
3       exhibit. I'm guessing you want to leave them  
4       laid out here until you're done testifying  
5       tomorrow; is that right?

6           A.       That would be my preference.

7           Q.       Okay. So why don't we mark  
8       these colored folders collectively as 26?

9                   (Whereupon, Deposition Exhibit  
10       Egilman 26, Dr. Egilman's reference  
11       folders, was marked for  
12       identification.)

13          Q.       (BY MS. SAULINO) And what is  
14       that sort of technicolor folder there?

15          A.       That's the one with five bad  
16       acts and limitations.

17          Q.       Okay.

18                   So --

19          A.       Here's my notes. Do you want  
20       my notes too?

21          Q.       Yes. Why don't we mark those  
22       as Exhibit 27. So let's give our court  
23       reporter a minute to give us the numbers.

24                   I just wanted to mark the notes

1 as 27.

2 So the notes are 27.

3 (Whereupon, Deposition Exhibit  
4 Egilman 27, Dr. Egilman's notes, was  
5 marked for identification.)

6 MS. SAULINO: And we'll figure  
7 out where to put the sticker for 26 at  
8 the break.

9 So Exhibit 28, then, I'd like  
10 to mark your box of your copies of the  
11 exhibits that you have been  
12 referencing.

13 MS. CONROY: I put the folders  
14 back in it.

15 (Whereupon, Deposition Exhibit  
16 Egilman 28, Dr. Egilman's opinion  
17 folders with stickies and notations,  
18 was marked for identification.)

19 MS. SAULINO: Okay.

20 Okay. Now, the colored folders  
21 in front of you we've made Exhibit 26.  
22 Your box with your notes on some  
23 exhibits is 28.

24 Your notes are Exhibit 27.

1                   Is there anything else that you  
2                   have in your vicinity here that you  
3                   intended to use today to testify?

4                   THE WITNESS: No.

5                   Q.       (BY MS. SAULINO) Okay. Now,  
6                   the posters behind you --

7                   A.       Oh, yeah, the posters.

8                   Q.       You have a number of posters  
9                   there.

10                  A.       Yeah, the posters.

11                  Q.       You brought a number of posters  
12                  here?

13                  A.       Yeah. About 15 posters.

14                  Q.       Why did you bring 15 posters?

15                  A.       No reason for 15, but you saw  
16                  we used one that was relevant.

17                         These are some of the more  
18                         important documents in my view. So.

19                  Q.       I see. So the poster boards  
20                  behind you are some of the more important  
21                  documents?

22                  A.       And also the poster that was  
23                  presented on Saturday wasn't given to you.  
24                  So we can't read it on a small copy. So I



1 brought that.

2 Q. Are any of the other posters  
3 representing something that wasn't given to  
4 us?

5 A. I don't think so.

6 Q. So we're going to ask at the  
7 break or overnight to get paper copies of the  
8 posters so that we can mark them. Okay?

9 A. They all have Bates numbers on  
10 them.

11 Q. Okay. Well, then we can mark  
12 them.

13 All right.

14 MS. SAULINO: I think this is a  
15 good time for a break.

16 THE WITNESS: Okay.

17 THE VIDEOGRAPHER: We're off  
18 the record at 6:40.

19 (Recess taken, 6:39 p.m. to  
20 7:05 p.m.)

21 THE VIDEOGRAPHER: We are back  
22 on the record at 7:06.

23 (Whereupon, Deposition Exhibit  
24 Egilman 29, USA Oxycodone consumption

1 (mg/capita) 1980 -- 2015, was marked  
2 for identification.)

3 Q. (BY MS. SAULINO) Dr. Egilman,  
4 we have marked as Exhibit 29 what I  
5 understand from your counsel to be a  
6 compilation of paper copies of the posters  
7 that you brought with you today.

8 A. She's not my counsel, but  
9 that's terrific. These are copies of the  
10 posters.

11 Q. Those are the copies of the  
12 posters, you agree?

13 A. But Ms. Conroy is not my  
14 counsel.

15 Q. So you agree that's what  
16 Exhibit 29 is, though?

17 A. Right.

18 Q. Dr. Egilman, you said earlier  
19 that there is not anything else that you  
20 consider to be a part of your report other  
21 than Exhibit 1F and Exhibits B1 through B489,  
22 and all of their attached documents; right?

23 A. Right. And cited documents.

24 Q. In B1 to B489; right?

1           A.       Correct.

2           Q.       Okay.

3           A.       You've attached all of this  
4 material, some of which is included there.  
5 Some of which is, as I stated earlier,  
6 supplemental bases to opinions and some of  
7 which would be -- and that would be a  
8 category. Some of the articles, for example,  
9 came out this week.

10                   So I don't know whether you  
11 were going to call this part of the report or  
12 not. But it's here. It's marked at the  
13 deposition.

14           Q.       So for the record what you are  
15 pointing at and saying is "this," is  
16 Exhibit 26, which are the colored folders  
17 that you brought with you today?

18           A.       Yes. I would say the material  
19 in the folders, yes.

20           Q.       And you previously had  
21 testified to additional bases that you had in  
22 one of the folders; right?

23           A.       No, I think I went through  
24 three or four folders of additional bases.

1       There was the -- remember, I -- you took me  
2       on -- you put me on plaintiff time, so there  
3       were two plaintiff time breaks. So there  
4       were additional bases one, and there was  
5       plaintiff time break two. That was  
6       additional bases. And plaintiff time two  
7       which is additional bases.

8               Q.       Okay.

9                       Other than those additional  
10       bases that we talked about earlier today, do  
11       you have more additional bases sitting here  
12       in front of us?

13              A.       No.

14              Q.       So your complete report and  
15       bases are found in Exhibit 1F, Exhibits B1  
16       through B489, the documents cited in  
17       Exhibits B1 through B489, and the two  
18       additional bases packets that you showed us  
19       today; right?

20              A.       Three additional bases packets.

21                       MS. CONROY: That are reflected  
22       in the transcript. They were already  
23       gone through the transcript this  
24       morning.

1 MS. SAULINO: So we've --

2 Q. (BY MS. SAULINO) So  
3 Exhibit 1F, Exhibits B1 through B489, the  
4 exhibits -- the documents cited in Exhibits  
5 B1 through B4.89, and the three additional  
6 bases pieces that you cited earlier today  
7 constitute your complete report; right?

8 A. Correct.

9 Q. Now, does the report,  
10 Deposition Exhibit 1F and the attached  
11 Exhibits B1 through B14 reflect a complete  
12 set of the opinions you will express in this  
13 case?

14 A. Those are a complete set of the  
15 opinions that I'm expressing now at this  
16 deposition.

17 I don't know what anybody else  
18 is going to ask. For example, I think other  
19 opinions have been elicited during this  
20 deposition, during questioning. So I can't  
21 predict what any of the defendants might ask  
22 that might elicit other opinions.

23 Q. Dr. Egilman, as an expert in  
24 this case, the opinions that you are offering

1 as opinions that you are offering under your  
2 expertise are contained in Deposition  
3 Exhibit 1F and the attached Exhibits B1  
4 through B489; correct?

5 A. Right. These are the opinions  
6 I'm offering today.

7 Q. And you intend to offer  
8 additional opinions at trial that you are not  
9 disclosing today?

10 MS. CONROY: Objection.

11 THE WITNESS: No.

12 Q. (BY MS. SAULINO) Do the  
13 documents and other evidence that you cite in  
14 Exhibits B1 through B489 to your report  
15 constitute a complete list of all of the  
16 bases and reasons for your opinions?

17 A. And now you left things out.  
18 If you go back to the original summary that I  
19 agreed to, yes.

20 Q. Okay. Fair enough. Do the  
21 documents and other evidence that you cite in  
22 Exhibits B1 through B489 plus the three  
23 additional bases that we discussed earlier  
24 today constitute a complete list of all of

1 the bases and reasons for your opinions?

2 A. Yes.

3 MS. SAULINO: Okay. All right.

4 I'm handing over the mic.

5 EXAMINATION

6 BY MR. MCGARRIGLE:

7 Q. Good evening, Doctor.

8 A. How are you doing?

9 Q. I'm doing fine. My name is  
10 Tom McGarrigle. I work with Reed Smith, and  
11 we represent Amerisource in this deposition.  
12 I'm going to have a few questions. And I'm  
13 going to hope that you are succinct in giving  
14 us your answers.

15 When you were assigning your  
16 office and your staff and your students, were  
17 they assigned to any particular defendant?  
18 So were there certain students and certain  
19 staff members that were designated to focus  
20 solely on one particular or group of  
21 defendants?

22 A. Well, do you know what? I  
23 forgot one student. Lena Milton. And she  
24 worked on a couple of things, but she also

1       particularly worked on, I think, Allergan.

2               Q.       Okay.

3               A.       But otherwise, no.

4               Q.       Was your staff or students  
5       assigned to any particular issue?

6               A.       Well, sure over the time,  
7       different staff worked on different issues.

8               Q.       Okay. Did you rely on your  
9       staff to review deposition transcripts?

10              A.       I think some, yes.

11              Q.       Did you personally review every  
12      deposition transcript in this litigation?

13              A.       Oh, no.

14              Q.       I want to direct your attention  
15      to your report, page 110 of your report. Our  
16      7.324.

17                      Do you have that in front of  
18      you? Do you have a copy of -- can we get it?

19              A.       It was here.

20                      MS. CONROY: Yeah, where did it  
21      go? With the actual report itself. We had  
22      that.

23                      It was 1F. Is it in the  
24      exhibits, then?



1           Q.       (BY MR. MCGARRIGLE) Doctor,  
2       while you're looking at that you might want  
3       to look to see if you have a copy of the  
4       corresponding exhibit and whether it has been  
5       changed or whether it has any notes on it.

6                   MS. CONROY: 324?

7                   MR. MCGARRIGLE: Yes.

8                   THE WITNESS: Do you have the  
9       324?

10                  Okay.

11                  Oh, she's looking at that.

12                  MS. CONROY: I'm going to tell  
13       you.

14                  Yeah. You've got writing on  
15       it.

16           Q.       (BY MR. MCGARRIGLE) Let's get  
17       this on the record.

18                   Doctor, in opinion offered on  
19       page 110 of your report, 7.3.24, it says  
20       "AmerisourceBergen (ABC) was light on order  
21       monitoring. The ABC focuses only on rapid  
22       growth, not steady sales, and the focus on  
23       big accounts only for suspicious order  
24       monitoring."

1 Did I read that correctly?

2 A. You did.

3 Q. And it's a reference to  
4 Exhibit D324 hereto attached; right?

5 A. Correct.

6 Q. I'm going to have marked as an  
7 exhibit, Exhibit No. 30, that report --  
8 excuse me, that Exhibit B324.

9 A. Do you want the one with my  
10 handwritten notes?

11 Q. And did you put some  
12 handwriting on it?

13 Let me ask you, first of all,  
14 did you -- have you changed your opinion?

15 A. No.

16 Q. Okay. And have you noted --  
17 made notes on the exhibit?

18 A. Yes.

19 Q. May I see it?

20 A. Sure.

21 Q. Can you read for me the notes  
22 that you wrote at the bottom?

23 A. Yeah. Walgreens --

24 Q. Of the exhibit?

1           A.       "Walgreens had data on all  
2       store sales."

3           Q.       Now, in support of the opinion  
4       offered in your report, the only support that  
5       you cite is this Exhibit B324; is that  
6       correct?

7           A.       The only opinion -- the only  
8       support for this particular opinion cited in  
9       this opinion is the one document. There are  
10      other documents, the Cardinal back-and-forth  
11      with Walgreens, and AmerisourceBergen  
12      stepping in, for example, that also relates  
13      to this.

14          Q.       Well, there's no reference in  
15      this to any cross-referencing to any other  
16      documents. Is that fair to say?

17          A.       Correct.

18          Q.       Is it also fair to say that  
19      there's no indication that you looked at any  
20      deposition testimony to support this opinion;  
21      correct?

22          A.       Correct.

23          Q.       There is no indication that you  
24      looked at any other documents?

1           A.       On this opinion?

2           Q.       On this opinion.

3           A.       Written on the opinion? That's  
4 correct.

5           Q.       So the only thing that you  
6 relied upon in coming up with this opinion is  
7 this e-mail from Tasha Polster of Walgreens  
8 dated October the 31st, 2013; is that  
9 correct?

10          A.       No.

11          Q.       In addition to that, what else  
12 have you relied upon in reaching this  
13 opinion?

14          A.       Do you want give to me the  
15 AmerisourceBergen section?

16                 There are other documents, but  
17 the main narrative here is when Walgreens got  
18 hit with the \$80 million penalty for  
19 overselling, they went to Cardinal to take  
20 over the Jupiter and supply and also the  
21 other six. Cardinal basically refused to do  
22 that, and they said it's not just six  
23 pharmacies that have problems. It's 374  
24 pharmacies that have problems.

1                   And since Cardinal refused to  
2     step in, Walgreens went to AmerisourceBergen,  
3     and Bergen stepped in and agreed to supply  
4     all of those stores and take over the Jupiter  
5     facility for Walgreens.

6                   Notwithstanding Cardinal's  
7     evaluation of the fact that those orders from  
8     those pharmacies were not proper. And  
9     subsequent to that, Walgreens bought  
10    26 percent of Amerisource. So that's the  
11    gist of it. That's in the other documents.

12                Q.     And I note that the  
13    Special Master has gone, and ever since he's  
14    gone, your answers are getting longer and  
15    more nonresponsive, so I'm going to ask you  
16    to focus on my questions.

17                   This opinion that you're  
18    offering is an opinion about the Amerisource  
19    Order Monitoring Program; isn't that correct?

20                A.     Correct.

21                Q.     And your opinion about that  
22    program is that it was late on order  
23    monitoring, that it focused only on rapid  
24    growth, not steady sales. And your only

1 basis for those opinions on the Order  
2 Monitoring Program is based on this e-mail.  
3 This is the only thing that you put in your  
4 report that allowed to us figure out what is  
5 the doctor relying on. Is that fair?

6 A. No.

7 Q. Is there anything in your  
8 report with respect to this opinion that  
9 allows us to know what the -- what the  
10 hypotheses that you started with? The  
11 question that you asked? Is there anything  
12 that I missed when I read your report and  
13 when I read your exhibit that tells me what  
14 the beginning hypotheses was?

15 A. Well, the hypotheses -- is it  
16 explicitly stated here? No.

17 Q. Okay. And is there anything in  
18 this report that tells me whether or not you  
19 revised your hypotheses during the course of  
20 your investigation and your study?

21 A. No.

22 Q. Okay.

23 Is it fair to say that the  
24 basis for the statement that ABC focuses only

1       on rapid growth is in -- is based upon the  
2       second paragraph of Tasha Polster's e-mail,  
3       where it states "Investigators look at rapid  
4       growth for a location and whether the order  
5       triggers a threshold."

6                       Do you see that?

7                       The second sentence.

8               A.       I see that. You asked a  
9       question.

10              Q.       Yeah.

11              A.       Do you want me to answer  
12       that did you read it correctly or do you want  
13       me to answer the question?

14              Q.       You can answer the question.

15              A.       No.

16              Q.       Okay. The e-mail that you  
17       cited as support refers to rapid growth.  
18       Your opinion, however, adds the word "only";  
19       correct?

20              A.       Correct.

21              Q.       So Walgreens wasn't saying that  
22       Amerisource's program only focused on rapid  
23       growth. That's something that you came up  
24       with; correct?

1           A.       No.

2           Q.       Okay. Is it fair to say that  
3       in the Walgreen e-mail, they do not limit the  
4       rapid growth by the word "only"?

5           A.       Yes.

6           Q.       Is it also fair to say that  
7       the -- that the basis for your opinion that  
8       the focus of the Amerisource Order Monitoring  
9       Program is on big accounts only is the  
10      statement that is highlighted on your exhibit  
11      that they really only focus on heavy hitters?

12          A.       Yes.

13          Q.       Okay. And is it -- did you  
14      write this or did one of your students write  
15      this or did one of your staff members write  
16      this opinion?

17          A.       I wrote this.

18                   MS. CONROY: Objection.

19          Q.       (BY MR. MCGARRIGLE) And when  
20      you were writing this opinion, did you  
21      attempt to be very careful and be very  
22      accurate?

23          A.       I tried to be as accurate as  
24      possible.



1           Q.       Okay. Is it fair to say that  
2       you took the sentence, "They really only  
3       focus on heavy hitters" to mean a reference  
4       to a customer?

5                   Is that how you interpreted  
6       this?

7           A.       Yes.

8           Q.       Yeah, because -- I want you to  
9       be really careful here, because this opinion  
10      is based on double hearsay, isn't it?

11                   This is -- this is  
12      Tasha Polster writing something based on a  
13      discussion that she had with a Joe Tomkiewicz  
14      of Amerisource; isn't that right?

15                   MS. CONROY: Objection.

16                   THE WITNESS: No.

17           Q.       (BY MR. MCGARRIGLE) Okay.  
18       This isn't a case where Ms. Polster is  
19       talking -- is reporting back of her meeting  
20       with Joe Tomkiewicz at Amerisource and  
21       talking about the Order Monitoring Program?

22           A.       Not only, no.

23           Q.       With respect to the sentence  
24       that you have highlighted in red, right after

1 the sentence "They really only focus on the  
2 heavy hitters" that you interpreted to mean  
3 the customers, the next sentence says "OxyIR  
4 30 MK combinations of cocktails with  
5 hydrocodone and/or oxycodone advantage of our  
6 system that we monitor CS or controlled  
7 substance."

8 Are you familiar with opioid  
9 cocktails? Are you familiar with opioid  
10 cocktails?

11 A. Mixtures? Yes.

12 Q. What's a Trinity?

13 A. That, I don't know.

14 Q. What's a Las Vegas?

15 A. That, I don't know.

16 Q. Did you ever hear that a  
17 Trinity opioid cocktail was a combination of  
18 a mixture of either hydrocodone or oxycodone  
19 and benzodiazepine and a muscle relaxer?

20 A. No.

21 MS. CONROY: Objection.

22 Q. (BY MR. MCGARRIGLE) You don't  
23 know anything about that. How about a Las  
24 Vegas being a mixture of either hydrocodone

1 or oxycodone and benzodiazepine? Did you  
2 ever hear that?

3 MS. CONROY: Objection.

4 THE WITNESS: No.

5 Q. (BY MR. MCGARRIGLE) Do you  
6 think there's anything wrong with an order  
7 monitoring system that takes opioid cocktails  
8 that are used out on the street and looks at  
9 combinations when orders are coming in of  
10 both an opioid with benzo? Do you think  
11 there's anything wrong with a system that  
12 looks at that?

13 MS. CONROY: Objection.

14 THE WITNESS: That's certainly  
15 something that should be looked at.

16 Q. (BY MR. MCGARRIGLE) So you're  
17 not being critical of the ABC Order  
18 Monitoring Program that is focusing and  
19 looking at cocktail combinations, are you?

20 A. I'm not criticizing that part  
21 of the sentence. Correct. I'm criticizing  
22 the first part of the sentence.

23 Q. Right. And that's because you  
24 misunderstood what Ms. Polster was talking

1       about when she was talking about the heavy  
2       hitters. She's not talking about customers.  
3       She's talking about drugs and drug  
4       combinations, oxy, hydro, Trinities.

5               A.       No, that's exactly what I  
6       interpreted.

7                       MS. CONROY: Objection.

8               Q.       (BY MR. MCGARRIGLE) Oh. Okay.  
9       So now you agree with me that the heavy  
10      hitter reference that's being made is not to  
11      heavy hitter customers, not big customers,  
12      not major customers, but in fact is a  
13      reference to the drugs that are -- that are  
14      the more powerful opioids that have been  
15      abused; is that your testimony?

16              A.       No. This reference to heavy  
17      hitters is to OxyIR, a combination of  
18      cocktails with hydrocodone, and/or oxycodone.

19              Q.       Okay. So you agree with me  
20      that the reference to heavy hitters refers to  
21      the drug; correct?

22              A.       In that section, that's  
23      correct.

24              Q.       Okay. And you've inserted the

1 word, in your opinion, "only rapid growth."

2 Isn't that correct?

3 MS. CONROY: Objection, asked

4 and answered.

5 Q. (BY MR. MCGARRIGLE) I'm happy  
6 with the answer.

7 Let's talk to -- in coming up  
8 with this opinion, being critical of ABC's  
9 Order Monitoring Program, did you -- can you  
10 tell me what the OMP is for ABC?

11 A. No.

12 Q. Is that just too many letters  
13 to deal with? Do you want me to break it  
14 down?

15 A. Go ahead.

16 Q. All right. Order Monitoring  
17 Program.

18 A. Right.

19 Q. Do you know Amerisource's Order  
20 Monitoring Program?

21 A. Do I know how --

22 Q. Do you know -- can you give me  
23 the details of it?

24 A. They do it.

1 Q. Yes.

2 A. No.

3 Q. Do you --

4 A. It's changed over time. So  
5 you've got to give me a time. But I don't  
6 know what -- as I sit here today without  
7 reviewing it for any period of time.

8 Q. For any of the periods of time.  
9 Do you know how they -- how the Amerisource  
10 Order Monitoring Program calculates  
11 thresholds?

12 That's a yes, no?

13 A. Do you mean at any point in  
14 time?

15 Q. Now. Can you tell me that?

16 A. No.

17 Q. Can you tell me, Doctor, can  
18 you tell me if you are aware that under the  
19 Order Monitoring Program, the focus is on  
20 looking at all sales, whether the sales come  
21 from a small, a medium, or a large customer?  
22 Do you know that?

23 A. That's not what this says.

24 Q. Well, this is coming from

1 Walgreens, right?

2 A. That's a Walgreens memo based  
3 on a meeting with Amerisource.

4 Q. Now, I want you to take a look  
5 at another document.

6 This will be -- looking at your  
7 report --

8 A. Did you mark this?

9 Q. That was -- that was marked and  
10 given --

11 MR. MCGARRIGLE: Let's make  
12 that 30 and that 30A.

13 (Whereupon, Deposition Exhibit  
14 Egilman 30, Opinion- AmerisourceBergen  
15 ("ABC") was light on order monitoring.  
16 The ABC focus is only on rapid growth,  
17 not steady sales Focus on big  
18 accounts only for suspicious order  
19 monitoring, was marked for  
20 identification.)

21 (Whereupon, Deposition Exhibit  
22 Egilman 30A, Opinion-  
23 AmerisourceBergen ("ABC") was light on  
24 order monitoring. The ABC focus is

1           only on rapid growth, not steady sales  
2           Focus on big accounts only for  
3           suspicious order monitoring, with  
4           revisions, was marked for  
5           identification.)

6           Q.       (BY MR. MCGARRIGLE) All right.  
7       Doctor, look at your report, page 80,  
8       paragraph 7121. "Opinion. Amerisource  
9       Bergen wanted to low key" -- in  
10      parenthesis -- "hide its association with  
11      pain care forum, PCF."

12                   Do you see that?

13           A.       I do.

14           Q.       And in support of that, you  
15      cite us to Exhibit B121. I'll have that  
16      marked as Exhibit 31.

17                   (Whereupon, Deposition Exhibit  
18      Egilman 31, Opinion-AmerisourceBergen  
19      ("ABC") wanted to 'low key' (HIDE) its  
20      association with Pain Care Forum  
21      ("PCF") with attachments  
22      PPLP004210521-4210523,  
23      PPLP004279424-4279425, PPLP004303453,  
24      PPLP004303456-4303457,



1 PPLPC018001477198-1477200,  
2 PPLPC022000926958-22000926959, was  
3 marked for identification.)

4 Q. (BY MR. MCGARRIGLE) Did either  
5 your student or your staff member write this  
6 opinion?

7 A. No.

8 MS. CONROY: Objection.

9 Q. (BY MR. MCGARRIGLE) Do you have  
10 a corresponding exhibit and has it changed or  
11 does it have any notes or modifications on  
12 it?

13 MS. CONROY: There are no notes  
14 or modifications.

15 Q. (BY MR. MCGARRIGLE) Okay. So  
16 it's clean, and you haven't changed your  
17 opinion; correct?

18 A. No.

19 Q. And in this, you're actually --  
20 is this one or two opinions? Is this an  
21 opinion, 1, that AmerisourceBergen is  
22 associated with a pain care forum, and 2,  
23 it's trying to hide that association?

24 MS. CONROY: Do you have a copy

1 of the exhibit for me?

2 MR. MCGARRIGLE: Probably not.

3 There you go.

4 MS. CONROY: Thank you.

5 THE WITNESS: Two --

6 I think --

7 Q. (BY MR. MCGARRIGLE) The  
8 question is --

9 A. I think it could be either 1 or  
10 2.

11 Q. Okay.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 Q. (BY MR. MCGARRIGLE) Do you  
19 know if either Mr. Rosen or Ms. Norton were  
20 deposed in this litigation?

21 A. I think Rosen was.

22 Q. Did you read his deposition?

23 A. I can't recall. It's possible.

24 [REDACTED] [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

5 Q. Do you know if Ms. Norton was  
6 deposed in that case?

7 A. That, I don't know.

■ [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

13 THE WITNESS: I was pretty sure  
14 they weren't deposed on it.

15 Q. (BY MR. MCGARRIGLE) Well,  
16 whatever, Mr. -- I will tell you, and I'll  
17 represent to you that -- I want you to assume  
18 that Ms. Norton was in fact deposed.

19 A. That, I understand. But  
20 whether she was deposed on this topic, I  
21 don't think so.

22 Q. Did you ever ask your students  
23 or your staff members to go review  
24 Mr. Rosen's deposition testimony or

1 Ms. Norton's deposition testimony before you  
2 came up with the opinion that ABC was  
3 associated with the pain care forum and  
4 really wanted to hide that association?

5 Did you do that?

6 A. Rosen, I think I read. Not  
7 Norton.

8 Q. Okay. Not Norton.

9 In fact, a large part of your  
10 opinion to hide is based on the fact that  
11 Ms. Norton used the word "low key"; correct?

12 A. Correct.

13 Q. Among your many specialties and  
14 areas of expertise, do you include the  
15 English language?

16 It's not meant to be a joke.  
17 Do you include the English language as an  
18 area where you're an expert.

19 A. I think I'm fluent in English.

20 Q. All right. What definition did  
21 you use to equate the word "low key" with the  
22 word "hide"?

23 A. I didn't get a dictionary  
24 definition.

1           Q.       Why did you use the word  
2       "hide"? "Hide" sounds sinister. It sounds  
3       like you did something wrong and you're  
4       trying to hide something. Is that what you  
5       were trying to imply in your opinion?

6           A.       Something sinister?

7           Q.       Yeah.

8           A.       No. Just stating a fact.

9           Q.       People that hide usually are  
10       trying to cover up something, aren't they?

11          A.       Not necessarily.

12          Q.       Do you know the definition of  
13       low key means laid back? It means not  
14       elaborate, not showy, not intense,  
15       restrained. Low profile. Relaxed.  
16       Easygoing. Calm.

17                   Do you accept those definitions  
18       of the word "laid back"?

19                   Do you accept those  
20       definitions --

21          A.       Sure.

22          Q.       -- of the word "laid back"?

23          A.       Sure.

24          Q.       What I don't see as the

1 definition of laid back, however, is the word  
2 "hide."

3                   A.           I don't know.    I haven't  
4       looked.

[illegible]

[illegible]

19 Q. What about in your folders back  
20 there because I'm sure they have this in  
21 there.

22                   A.       Let's see that.

23 Q. Could you -- did you have a  
24 chance to look at those?



1           A.       I've got it.

2           Q.       They should be the exhibits.

3           A.       I've got it.

4           Q.       So in support of this opinion  
5       that in 2008, ABDC was associated with the  
6       pain care forum and was trying to hide it,  
7       you say six documents dated July 2010, two  
8       years after this e-mail, 2012, four years  
9       after the e-mail, three of them dated 2016,  
10      which was eight years after the e-mail, and  
11      2017, nine -- almost nine years after the  
12      e-mail, how desperate were you to support  
13      this opinion by using documents that occurred  
14      almost a decade after this supposed event?

15                   MS. CONROY:  Objection.

16                   THE WITNESS:  Not at all.

17           Q.       (BY MR. MCGARRIGLE)  Do any of  
18      those documents, any of those six documents  
19      even have the name "Amerisource" on them?

20           A.       Let's see.

21                   MS. WELCH:  Counsel, if you're  
22      not done, we need to take a break.

23                   MS. CONROY:  We're in the  
24      middle of an answer here.

1 MS. WELCH: Sorry, I thought he  
2 had answered it.

3 Q. (BY MR. MCGARRIGLE) I want you  
4 to assume, Doctor -- I'll help you out a  
5 little bit because we're pressed for time.  
6 There's 110 names on that e-mail, not one  
7 from Amerisource.

8 A. On the cover, you mean?

9 Q. Yes.

10 A. Well, I'm looking.

11 [Document review.]

12 THE WITNESS: Well, this is  
13 a -- first of all, it's an HDMA.net  
14 document. So it's an HDMA document of  
15 which Amerisource was a member.

16 The side e-mail also refers to  
17 HDMA testimony, of which  
18 AmerisourceBergen was a member.

19 Q. (BY MR. MCGARRIGLE) Well,  
20 that's not your opinion. Your opinion isn't  
21 that HDMA was trying to hide their  
22 association with the forum, that Amerisource  
23 was. Correct?

24 A. Let me just see what the

1 question was before you interrupted the  
2 answer.

3 [Document review.]

4 THE WITNESS: Well, this says  
5 HDMA -- this is referring to McKesson  
6 joining the pain care forum.

7 Bert Rosen says, if you're a  
8 member of HDMA, you're already a  
9 member of the pain care forum.  
10 AmerisourceBergen was a member of  
11 HDMA, so according to Bert Rosen, they  
12 were members of the pain care forum  
13 through their membership in HDMA. And  
14 AmerisourceBergen is on the next  
15 document in an e-mail; Norton, in  
16 fact.

17 Q. (BY MR. MCGARRIGLE) And that's  
18 dated what date?

19 A. 2017.

20 And this is -- I think  
21 Bert Rosen acting in his role as the pain  
22 care forum lobbyist.

23 [Document review.]

24 That's it.

1                   MR. MCGARRIGLE:  And that's it  
2                   for me.  Thanks.

3                   THE VIDEOGRAPHER:  Going off  
4                   the record.  The time is 7:43 p.m.

5                   (Proceedings recessed at  
6                   7:43 p.m.)

7                               --o0o--

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CERTIFICATE

I, DEBRA A. DIBBLE, Registered  
Diplomate Reporter, Certified Realtime  
Reporter, Certified Realtime Captioner,  
Certified Court Reporter and Notary Public,  
do hereby certify that prior to the  
commencement of the examination, DR. DAVID  
EGILMAN was duly sworn by me to testify to  
the truth, the whole truth and nothing but  
the truth.

I DO FURTHER CERTIFY that the  
foregoing is a verbatim transcript of the  
testimony as taken stenographically by and  
before me at the time, place and on the date  
hereinbefore set forth, to the best of my  
ability.

I DO FURTHER CERTIFY that pursuant  
to FRCP Rule 30, signature of the witness was  
not requested by the witness or other party  
before the conclusion of the deposition.

I DO FURTHER CERTIFY that I am  
neither a relative nor employee nor attorney  
nor counsel of any of the parties to this  
action, and that I am neither a relative nor  
employee of such attorney or counsel, and  
that I am not financially interested in the  
action.



---

DEBRA A. DIBBLE, RDR, CRR, CRC  
NCRA Registered Diplomate Reporter  
NCRA Certified Realtime Reporter  
Certified Court Reporter

Dated: 1 May 2019

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

|    | ERRATA |         |        |
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ACKNOWLEDGMENT OF DEPONENT

I, DAVID S. EGILMAN, M.D., MPH, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

\_\_\_\_\_  
DAVID S. EGILMAN, M.D., MPH

DATE

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



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